# Constitutionality Debate

## Hate Speech = Protected

#### Hate speech is constitutionally protected – numerous court cases prove

Fire Intern 15. July 20, 2015, 7-20-2015, "The Case for Hate Speech," FIRE, https://www.thefire.org/the-case-for-hate-speech/, accessed 2-14-2017. NP

Disappointingly, when discussing free speech and its value to society, I have become accustomed to some variant of the inevitable rejoinder: “Hate speech is not free speech.” This maxim has been repeated in discussions about everything from the protest against portrayal of the prophet Muhammad to the controversy surrounding the Confederate battle flag. It has been parroted by nationally syndicated news personalities under the guise of constitutional truth. I have seen it painted without irony on the free speech wall of my own college. Just as with free speech, there is a distinction to be drawn between hate speech in a legal context and hate speech as a more abstract concept. I would submit, however, that regardless of whether we are speaking legally or conceptually, “hate speech” can prove valuable to public understanding and must be protected. In the United States, hate speech is not a recognized exception to the free speech protections under the First Amendment. Put simply, the vast majority of “hate speech” is free speech. In the 1969 Supreme Court decision Brandenburg v. Ohio, the justices assessed speech that would be considered “hate” by most people’s colloquial definitions: at issue was a Ku Klux Klan leader’s inflammatory speech urging listeners to take revenge on racial minorities. The court held that it did not constitute an incitement of lawlessness and was therefore constitutionally protected. Similarly, in R.A.V. v. City of St. Paul, the court overturned a teenager’s conviction for burning a cross on a black family’s lawn. In R.A.V., the content of speech was determined to be an inadequate justification for prohibition. The right to the undoubtedly hateful speech of the Westboro Baptist Church was also upheld in Snyder v. Phelps, which dealt with the members’ protest ahead of a soldier’s funeral. The judgments in these cases establish a strong precedent against any sort of legislative attempt to punish hate speech in the United States. To say that hate speech is not free speech in America is plainly false. The judiciary comprehends the imprudence of allowing a centralized authority to regulate not just what one is allowed to say, but what one is allowed to hear. One of FIRE’s co-founders, Alan Charles Kors, when talking about the importance of protecting hateful speech, recalls a scene from Robert Bolt’s play A Man for All Seasons. In it, Thomas More states his refusal to arrest Richard Rich, a man who later conspires to have More convicted on false pretense, even “[i]f he were the Devil himself until he broke the law.” Upon hearing this, Roper, More’s zealous son-in-law-to-be, asserts that he would cut down every law in England to get after the Devil. More responds: And when the last law was down, and the Devil turned round on you where would you hide, Roper, the laws all being flat? … This country’s planted thick with laws from coast to coast – Man’s laws, not God’s — and if you cut them down – and you’re just the man to do it – d’you really think you could stand upright in the winds that would blow then? … Yes, I’d give the Devil benefit of law, for my own safety’s sake! The question More poses evokes another: Who watches the watchmen? If the law is thrown aside in order to prosecute some nebulous “bad,” what will happen to the “good” when the roles are reversed? If hate speech is to be defined, who gets to say what it is and is not?

### A2 Brown v. Board of Ed

#### Brown V. Board of Ed doesn’t justify restricting hate speech – it conflates the difference between speech and action. Even if speech is action – it would still receive protection since the court values symbolic speech.

Nadine Strossen 90. Regulating Racist Speech on Campus: A Modest Proposal?. www.jstor.org/stable/pdf/1372555.pdf. Duke Law Journal, Vol. 1990, No. 3, Frontiers of Legal Thought II. The New First Amendment (Jun., 1990), pp. 484-573. Duke University School of Law. NP 2/23/17.

Professor Lawrence intriguingly posits that Brown v. Board of Edu- cation, 289 Bob Jones University v. United States, 290 and other civil rights cases justify regulation of private racist speech.291 The problem with drawing an analogy between all of these cases and the subject at hand is that the cases involved either government speech, as opposed to speech by private individuals, or conduct, as opposed to speech.292 Indeed, Brown itself is distinguishable on both grounds. 1. The Speech/Conduct Distinction. First, the governmental defendant in Brown-the Topeka, Kansas Board of Education-was not simply saying that blacks are inferior. Rather, it was treating them as inferior through pervasive patterns of conduct, by maintaining systems and structures of segregated public schools. To be sure, a by-product of the challenged conduct was a message, but that message was only inci- dental. Saying that black children are unfit to attend school with whites is materially distinguishable from legally prohibiting them from doing so, despite the fact that the legal prohibition may convey the former message. Professor Lawrence's point proves too much. If incidental messages could transform conduct into speech, then the distinction between speech and conduct would disappear completely, because all conduct conveys a message. To take an extreme example, a racially motivated lynching ex- presses the murderer's hatred or contempt for his victim. But the clearly unlawful act is not protected from punishment by virtue of the incidental message it conveys. And the converse also is true. Just because the gov- ernment may suppress particular hate messages that are the by-product of unlawful conduct, it does not follow that it may suppress all hate messages. Those messages not tightly linked to conduct must still be protected.293 Professor Lawrence's argument is not advanced by his unexception- able observation that all human activity may be described both as "speech" and as "conduct." All speech entails some activity (e.g., the act of talking) and all conduct expresses some message.294 First, this fact does not justify treating any speech-conduct as unprotected; second, it does not justify eliminating protection from the particular class of speech-conduct that Professor Lawrence deems regulable. The fact that there is no clear distinction between speech and con- duct does not necessarily warrant limiting the scope of protected speech- conduct;295 instead, the lack of a clear distinction could as logically war rant expanding the scope of protection. Although one could argue-as does Professor Lawrence-that some speech is tantamount to conduct and should therefore be regulated, one could also argue that some conduct is tantamount to speech and therefore should not be regulated. This latter approach has **char**acterized a line of Supreme Court decisions that protect various forms of conduct, ranging from labor picketing to burning the American flag, as "symbolic speech.”

#### Brown v. Board of Ed is about formal legal equality rather than communication of messages – doesn’t apply to speech regulations

Gey 96, Steven G. The Case against Postmodern Censorship Theory. University of Pennsylvania Law Review, Vol. 145, No. 2 (Dec., 1996), pp. 193-297. NP 2/14/17.

The alternative, and far more common, explanation of Brown is that the Court held segregated public schools unconstitutional primarily because such schools provided black children with a measurably inferior education than that which they provided to white students. This interpretation maintains that the Court was concerned not so much with the message of segregation as with the mechanisms of segregation and the concrete effects such mechanisms had on the lives of black children. The actual holding of the case, after all, is that "[s]eparate educational facilities are inherently unequal."16 According to this interpretation, the "feeling of inferiority" 7 to which ChiefJustice Warren referred is relevant in that it contributes in specific ways to the concrete reality of segregation, most directly by making it harder for black children to achieve the same level of educational attainment as the more privileged white children.'8 Under this interpretation, Brown was primarily directed at eliminating every manifestation of government-enforced educational, political and social ostracism; the Court assumed that eliminating these concrete effects would also diminish the force of the ideological racism that justified segregation.

### A2 Captive Audiences

#### Viewpoint based discrimination is unconstitutional, even if it’s in places where there are captive audiences

Nadine Strossen 90. Regulating Racist Speech on Campus: A Modest Proposal?. www.jstor.org/stable/pdf/1372555.pdf. Duke Law Journal, Vol. 1990, No. 3, Frontiers of Legal Thought II. The New First Amendment (Jun., 1990), pp. 484-573. Duke University School of Law. NP 2/23/17.

Even if various areas of a university are not classified as public forums, and even if occupants of such areas are designated captive audiences, any speech regulations in these areas still would be invalid if they discriminated on the basis of a speaker's viewpoint. Viewpoint-based dis- crimination constitutes the most egregious form of censorship and almost always violates the first amendment.105 Accordingly, viewpoint discrimination is proscribed even in regulations that govern non-public forum government property?06 and regulations that protect captive audiences. 107

### A2 Defamation

#### Group defamation laws are unconstitutional – Beaurharnais is no longer good law

Nadine Strossen 90. Regulating Racist Speech on Campus: A Modest Proposal?. www.jstor.org/stable/pdf/1372555.pdf. Duke Law Journal, Vol. 1990, No. 3, Frontiers of Legal Thought II. The New First Amendment (Jun., 1990), pp. 484-573. Duke University School of Law. NP 2/23/17.

First, group defamation regulations are unconstitutional in terms of both Supreme Court doctrine and free speech principles. To be sure, the Supreme Court's only decision that expressly reviewed the issue, Beauharnais v. Illinois, 167 upheld a group libel statute against a first amend- ment challenge. However, that 5-4 decision was issued almost forty years ago, at a relatively early point in the Court's developing free speech jurisprudence. Beauharnais is widely assumed no longer to be good law in light of the Court's subsequent speech-protective decisions on related issues, notably its holdings that strictly limit individual defamation actions so as not to chill free speech.168 Statements that defame groups convey opinions or ideas on matters of public concern,169 and therefore should be protected even if those statements also injure reputations or feelings.'70 The Supreme Court recently reaffirmed this principle in the context of an individual defamation action, in Milkovich v. Lorain Journal Co. 171

#### Group defamation doesn’t provide grounds for hate speech regulation

Nadine Strossen 90. Regulating Racist Speech on Campus: A Modest Proposal?. www.jstor.org/stable/pdf/1372555.pdf. Duke Law Journal, Vol. 1990, No. 3, Frontiers of Legal Thought II. The New First Amendment (Jun., 1990), pp. 484-573. Duke University School of Law. NP 2/23/17.

The position that the intentional infliction of emotional distress tort should virtually never apply to words recently received support in Hustler Magazine v. Falwell. 159 Chief Justice Rehnquist, writing for a unani- mous Court, reversed a jury verdict which had awarded damages to the nationally-known minister, Jerry Falwell, for the intentional infliction of emotional distress. The Court held that a public figure may not "recover damages for emotional harm caused by the publication of an ad parody offensive to him, and doubtless gross and repugnant in the eyes of most."160 The Court further ruled that public figures and public officials may not recover for this tort unless they could show that the publication contains a false statement of fact which was made with "actual malice," i.e., with knowledge that the statement was false or with reckless disre- gard as to whether or not it was false.161 In other words, the Court required public officials or public figures who claim intention emotional distress to satisfy the same heavy burden of proof it imposes upon such individuals who bring defamation claims.162 Although the specific Falwell holding focused on public figure plain- tiffs, much of the Court's language indicated that, because of first amend- ment concerns, it would strictly construe the intentional infliction of emotional distress tort in general, even when pursued by non-public plaintiffs. For example, the Court said, to require a statement to be "out- rageous" as a prerequisite for imposing liability did not sufficiently pro- tect first amendment values. Because the "outrageousness" of the challenged statement is a typical element of the tort (it is included in the Restatement definition163) the Court's indication that it is constitution- ally suspect has ramifications beyond the sphere of public figure actions. The Court warned: "Outrageousness" in the area of political and social discourse has an inherent subjectiveness about it which would allow a jury to impose liability on the basis of the jurors' tastes or views, or perhaps on the basis of their dislike of a particular expression. An "outrageousness" standard thus runs afoul of our longstanding refusal to allow damages to be awarded because the speech in question may have an adverse emotional impact on the audience.'64 For the reasons signalled by the unanimous Supreme Court in Falwell, any cause of action for intentional infliction of emotional distress that arises from words must be narrowly framed and strictly applied in order to satisfy first amendment dictate In addition to flouting constitutional doctrine and free speech prin- ciples, rules sanctioning group defamation are ineffective in curbing the specific class of hate speech that Professor Lawrence advocates re- straining. Even Justice Frankfurter's opinion for the narrow Beauhar- nais majority repeatedly expressed doubt about the wisdom or efficacy of group libel laws. Justice Frankfurter stressed that the Court upheld the Illinois law in question only because of judicial deference to the state legislature's judgment about the law's effectiveness.172 The concept of defamation encompasses only false statements of fact that are made without a good faith belief in their truth. Therefore, any disparaging or insulting statement would be immune from this doctrine, unless it were factual in nature, demonstrably false in content, and made in bad faith. Members of minority groups that are disparaged by an al- legedly libelous statement would hardly have their reputations or psyches enhanced by a process in which the maker of the statement sought to prove his good faith belief in its truth, and they were required to demon- strate the absence thereof. 17

### A2 Intentional infliction of emotional distress

#### Intentional infliction of emotional distress doesn’t provide grounds for protecting hate speech

Nadine Strossen 90. Regulating Racist Speech on Campus: A Modest Proposal?. www.jstor.org/stable/pdf/1372555.pdf. Duke Law Journal, Vol. 1990, No. 3, Frontiers of Legal Thought II. The New First Amendment (Jun., 1990), pp. 484-573. Duke University School of Law. NP 2/23/17.

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### A2 Incitement

#### Hate speech does not constitute an incitement to riot

Cohen, Carl. FREE SPEECH AND POLITICAL EXTREMISM: HOW NASTY ARE WE FREE TO BE?\* Law and Philosophy7 (1989)263--279. © 1989 by Kluwer Academic Publishers.

"But [the Nazi-blocker rejoins] you underestimate the seriousness of the threat this demonstration would immediately create. If the Nazis march with swastikas and brown shirts on Miami Beach they will almost certainly provoke a riot. Incitement to riot is a crime. When it is deliberate as in the case we envisage, when its violent consequences are highly probable and fully anticipated, such incitement cannot be defended as mere speech. It is conduct designed to breach the public peace, using the First Amendment as a shield. Citizens of Miami Beach have the right, even the duty, to protect themselves from that despi- cable design". This argument is dangerous. It is often heard, but it seriously mis- apprehends the concept of "incitement to riot". That a message or a symbol excites an audience to furious antagonism gives no evidence whatever of criminal incitement. That crime consists in urging upon one's audience the commission of some unlawful act in a context in which it is probable that some in the audience will do what is being urged. Even then the speaker will not normally be guilty of criminal incitement unless persons in his audience do in fact engage in the un- lawful conduct he urged upon them. Nothing like these conditions are present in the case of a Nazi march in Miami Beach, or an anti-Contra demonstration in Miami. In such demonstrations it is usual that no specific acts are urged at all, and Nazis are very careful never to urge illegal acts. They say things like: "Jews Not Wanted Here!" or, "White Power!" or, "America for the White Man!" Some in their audience may then break the law by attacking not the Jews but the Nazis themselves - but those whose symbols provoked their fury cannot be criminally responsible for that misconduct.

Incitement must be (and in the law it is) very narrowly delineated. When overt unlawful deeds are committed as a direct consequence of agitating speech, that speech becomes a part of the crime - as the planning of a robbery becomes part of the robbery itself and persons whose inflammatory words lead to the very disorder they propose may be similarly culpable as part of the deliberate creators of that disorder. But Nazis, in Miami Beach, where no one in the audience will be in- clined to do anything they may urge, could never be guilty of inciting to riot.

### A2 Fighting Words

#### Fighting words doctrine does not apply to hate speech

ACLU N.D. American Civil Liberties Union, "Hate Speech on Campus," https://www.aclu.org/other/hate-speech-campus, accessed 2-22-2017

Q: Aren't some kinds of communication not protected under the First Amendment, like "fighting words?" A: The U.S. Supreme Court did rule in 1942, in a case called Chaplinsky v. New Hampshire, that intimidating speech directed at a specific individual in a face-to-face confrontation amounts to "fighting words," and that the person engaging in such speech can be punished if "by their very utterance [the words] inflict injury or tend to incite an immediate breach of the peace." Say, a white student stops a black student on campus and utters a racial slur. In that one-on-one confrontation, which could easily come to blows, the offending student could be disciplined under the "fighting words" doctrine for racial harassment. Over the past 50 years, however, the Court hasn't found the "fighting words" doctrine applicable in any of the hate speech cases that have come before it, since the incidents involved didn't meet the narrow criteria stated above. Ignoring that history, the folks who advocate campus speech codes try to stretch the doctrine's application to fit words or symbols that cause discomfort, offense or emotional pain.

#### Fighting words doctrine doesn’t apply to college speech codes – it’s limited in scope

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Fighting Words. The fighting words doctrine is the principal model for the Stanford code, which Professor Lawrence supports.ll6 However, this doctrine provides a constitutionally shaky foundation for several reasons: it has been substantially limited in scope and may no longer be good law; even if the Supreme Court were to apply a narrowed version of the doctrine, such an application would threaten free speech principles; and, as actually implemented, **t**he fighting words doctrine sup- presses protectible speech and entails the inherent danger of discriminatory application to speech by members of minority groups and dissidents. Although the Court originally defined constitutionally regulable fighting words in fairly broad terms in Chaplinsky v. New Hampshire, 117 subsequent decisions have narrowed the definition to such a point that the doctrine probably would not apply to any of the instances of campus racist speech that Professor Lawrence and others seek to regulate. As originally formulated in Chaplinsky, the fighting words doctrine ex- cluded from first amendment protection "insulting or 'fighting' words, those which by their very utterance inflict injury or tend to incite an immediate breach of the peace."1"8

#### Subsequent decisions basically overturned Chaplinsky – it’s no longer good law – outweighs, constitutional scholars agree

Nadine Strossen 90. Regulating Racist Speech on Campus: A Modest Proposal?. www.jstor.org/stable/pdf/1372555.pdf. Duke Law Journal, Vol. 1990, No. 3, Frontiers of Legal Thought II. The New First Amendment (Jun., 1990), pp. 484-573. Duke University School of Law. NP 2/23/17.

In Gooding v. Wilson, the Court substantially narrowed Chaplinsky's definition of fighting words by bringing that definition into line with Chaplinsky's actual holding.123 In Gooding, as well as in every subse- quent fighting words case, the Court disregarded the dictum in which the first prong of Chaplinsky's definition was set forth and treated only those words that "tend to incite an immediate breach of the peace" as fighting words. Consistent with this narrowed definition, the Court has invali- dated regulations that hold certain words to be per se proscribable and insisted that each challenged utterance be evaluated contextually.124 Thus, under the Court's current view, even facially valid laws that re- strict fighting words may be applied constitutionally only in circumstances where their utterance almost certainly will lead to immediate violence.125 Professor Tribe described this doctrinal development as, in effect, incorporating the clear and present danger test into the fighting words doctrine.126 In accordance with its narrow construction of constitutionally per- missible prohibitions upon "fighting words," the Court has overturned every single fighting words conviction that it has reviewed since Chaplin- sky. 127 Moreover, in a subsequent decision, the Court overturned an in-junction that had been based on the very word underlying the Chaplinsky conviction. 128 For the foregoing reasons, **S**upreme Court Justices and constitu- tional scholars persuasively maintain that Chaplinsky's fighting words doctrine is no longer good law.130 More importantly, constitutional scholars have argued that this doctrine should no longer be good law, for reasons that are particularly weighty in the context of racist slurs.'3' First, as Professor Gard concluded in a comprehensive review of both Supreme Court and lower court decisions that apply the fighting words doctrine, the asserted governmental interest in preventing a breach of the peace is not logically furthered by this doctrine. He explained that: [I]t is fallacious to believe that personally abusive epithets, even if ad- dressed face-to-face to the object of the speaker's criticism, are likely to arouse the ordinary law abiding person beyond mere anger to uncontrollable reflexive violence. Further, even if one unrealistically as- sumes that reflexive violence will result, it is unlikely that the fighting words doctrine can successfully deter such lawless conduct.132

# Hate Speech DA

#### Speech codes change social norms and solve for problematic mindsets

Gould 5, J. B. (2005). Speak No Evil : The Triumph of Hate Speech Regulation. Chicago: University of Chicago Press. P 175-177.

Yet the very adoption of hate speech policies has influenced behavior on several campuses. This point was repeated to me by many administrators at the schools I visited, who reported the rise of a “culture of civility” that eschews, if not informally sanctions, hateful speech. “Don’t mistake symbolism for impotence,” they regularly reminded me. Symbols shape and reflect social meaning, providing cues to the community about the range of acceptable behavior. Adopting a hate speech policy, then, could have persuasive power even if it were rarely enforced. Consider the dean of students at a northeastern liberal arts college, who spoke proudly of her school’s hate speech policy. Had the policy been formally invoked, I asked. “Rarely,” she told me, but the measure “sets a standard on campus. It gives us something we can point our finger to in the catalog to remind students of the expectations and rights we all have in the community.” This sentiment was repeated by the president of a well-known institution, who claimed that “we didn’t set out to enforce the policy punitively but to use it as the basis for our educational efforts at respecting individuality.” Still another administrator admitted that, “while we’ve rarely used the policy formally, it does give support to students who believe their rights have been violated. They’ll come in for informal mediation and point to the policy as the reason for why the other person must stop harassing them.” Sociologists would call this process norm production—that symbolic measures can condition and order behavior without the actual implementation of punitive mechanisms.8 Hate speech policies set an expected standard of behavior on campus; college officials employ orientation sessions, extracurricular programs, and campus dialogue to inculcate and spread the message; and over time an expectation begins to take root that hate speech is unacceptable and should be prohibited. Of course, this mechanism makes regulation a self-policing exercise—colleges need not take formal or punitive action—but the effect is to perpetuate a collective norm that sees hate speech as undesirable and worthy of prohibition. Moreover, considering the iso-morphic tendencies of college administrators, the creation of speech poli-cies—or speech norms—at respected and prestigious institutions has a“trickle down” effect throughout academe. Again, sociologists would callthis process normative isomorphism, but most people know the phenome-non as “keeping up with the Joneses.”9If Harvard, Berkeley, or Brown pas-ses measures against hate speech, then institutions lower in the academicfood chain are likely to take note and follow suit. If prestigious institutionsadvance campus norms that eschew hate speech, then both peer and“wannabe” institutions are likely to consider and replicate such informalrules. Indeed, this is the very fear of FIRE and its compatriots—that if PCpolicies are not checked now, their message will spread throughout academeinfecting other campuses. What FIRE fails to say, but undoubtedly must bethinking, is that informal law and mass constitutionalism are at stake if the spread of speech regulation is not curbed. FIRE can hang its hat on R.A.V.,Doe, UWM Post, and the other court cases in which judges have overturned college hate speech policies, but as hate speech regulation continues to flour-ish on college campuses, informal speech norms are at stake throughout the larger bounds of civil society. APA (American Psychological Assoc.) Gould, J. B. (2005). Whatever one thinks of FIRE and its agenda, its supporters are like the old-fashioned fire brigade that excitedly shows up at a burning building only to toss paltry pails of water on the inferno. Hate speech regulation has already crossed the firebreak between academe and the rest of civil society and is well on its way toward acceptance in other influential institutions. The initial signs are found in surveys of incoming college freshmen. Shortly after R.A.V., researchers began asking new freshmen whether they believe that “colleges should prohibit racist/sexist speech on campus.”10In a 1993 survey, 58 per-cent of first-year students supported hate speech regulation, a number that has stayed steady and even grown a bit in the years following. By 1994, two-thirds of incoming freshmen approved of hate speech prohibitions, with more recent results leveling off around 60 percent.11Unfortunately, there are not similar surveys before 1993 to compare these results against, but it is a safe bet that support would have been minimal through the mid-1980s when the issue had not yet achieved salience. More to the point, the surveys show that support for speech regulation is achieved before students ever set foot on cam-pus. If, as the codes’ opponents claim, colleges are indoctrinating students in favor of speech regulation, the influence has reached beyond campus borders. New students are being socialized to this norm in society even before they at-tend college. So too, surveys of the general population show an increasing queasiness with hate speech and a greater willingness to regulate such expression pri-vately, especially when communicated over the Internet. In 1991, at the height of the speech code controversy, the CBS News/New York Times Poll asked the following question of American adults: Some universities have adopted codes of conduct under which students may be expelled for using derogatory language with respect to blacks, Jews, women, homosexuals and other groups of students. Which of the following comes closest to your view about this? A. Students who insult other students in this fashion should be subject to pun-ishment; or B. The Bill of Rights protects free speech for these students, and they should not be subject to punishment. Among respondents, 60 percent agreed that hate speech deserved punishment; only 32 percent believed that the Bill of Rights should protect such expression, with 8 percent undecided.1

Outweighs – a. precludes aff offense – censorship is self-imposed rather than external which means it gains legitimacy – your impacts are minimal since they rely on consequences of punishment, but punishment is rare because of large decreases in hateful speech, b. disproves the thesis of aff arguments – speech codes are a form of discourse that symbolically disavows hate speech– it’s not about more speech vs less speech, but where conversations begin, c. disproves backlash/martyrdom arguments – there’s support for speech codes so people won’t reject their usage, d. means uniqueness flows neg – disavowal of hate speech is increasing which is empirical proof speech codes work, e. probability – Gould’s thesis is empirically verified

Gelber and McNamara 15. Katharine Gelber and Luke McNamara. (Katharine Gelber is Professor of Politics and Public Policy at the University of Queensland. Professor McNamara was the Dean of the Faculty of Law at the University of Wollongong from 2007 to 2012.) The Effects of Civil Hate Speech Laws: Lessons from Australia. Law & Society Review 49 Law & Soc'y Rev. 631. 2015 Law and Society Association Law and Society. Pg 16. Review. NP 4/22/17.

Importantly in interview many community members and representatives, when asked if they thought hate speech laws were important, expressed overwhelming support for their retention. There was a strong sense that the laws could make a positive contribution outside their formal utilization. The overwhelming view was that the laws were useful as a statement in support of vulnerable communities. Interviewees described it as important simply to "know they're there" and that they set a standard for what's "not acceptable." Indigenous interviewees particularly recognised that hate speech could come from parliamentarians and the [\*656] mainstream media, and saw Australia's hate speech laws as useful **in setting a standard** against which all people should be held to account. There is resonance here with Gould's (2005) thesis about the impact of campus speech codes in the United States, which emphasises that they may have educative effects even in the absence of formal invocation or enforcement. It follows that the legal form and parameters of hate speech laws may be less important than the fact of their existence. The Australian experience with civil hate speech laws suggests that a decision not to rely on the criminal law should not automatically be interpreted as a "weak" regulatory response, but rather as a potentially useful way of setting a standard for public debate.

#### Hate speech is a necessary tool of subjugation – it deems groups as unworthy of rights, justifying further oppression

Delgado and Stefancic 9. Richard Delgado (University Professor, Seattle University School of Law; J.D., 1974, University of California, Berkeley) Jean Stefancic\*\* (Research Professor, Seattle University School of Law; M.A., 1989, University of San Francisco.). FOUR OBSERVATIONS ABOUT HATE SPEECH. wakeforestlawreview.com/wp-content/uploads/2014/10/Delgado\_LawReview\_01.09.pdf pg 363-364. NP 4/22/17.

With general hate speech, such as anonymously circulated flyers or speeches to a crowd, the harms, while diffuse, may be just as serious.74 Recent scholarship shows how practically every instance of genocide came on the heels of a wave of hate speech depicting the victims in belittling terms.75 For example, before launching their wave of deadly attacks on the Tutsis in Rwanda, Hutus in government and the media disseminated a drumbeat of messages casting their ethnic rivals as despicable.76 The Third Reich did much the same with the Jews during the period leading up to the Holocaust. When the United States enslaved African Americans and killed or removed the Indians, it rationalized that these were simple folk who needed discipline and tutelage, or else bloodthirsty savages who resisted the blessings of civilization.78 When, a little later, the nation marched westward in pursuit of manifest destiny, it justified taking over the rich lands of California and the Southwest on the ground that the indolent Mexicans living on them did not deserve their good fortune.79 Before interning the Japanese during World War II, propagandists depicted the group as sneaky, suspicious, and despotic.80 It is possible that the connection between general hate speech and instances of mass oppression may not be merely statistical and contingent, but conceptual and necessary.81 Concerted action requires an intelligible intention or rationale capable of being understood by others. One cannot mistreat another group without first articulating a reason why one is doing it—otherwise, no one but a sadist would join in.82 Without a softening-up period, early steps toward genocide, such as removing Jews to a ghetto, would strike others as gratuitous and command little support. Discriminatory action of any kind presupposes a group that labors under a stigma of some kind.83 The prime mechanism for the creation of such stigma is hate speech.84 **Without it, genocide, imperialism, Indian removal, and Jim Crow could gain little purchase.85**

# Util F/L

## O/V

#### Speech only matters if it’s instrumental to some external end. This necessitates some restrictions of speech

Fish 94, Stanley Eugene. There's No Such Thing As Free Speech : And It's a Good Thing, Too. New York: Oxford University Press, 1994. eBook Collection (EBSCOhost), EBSCOhost (accessed January 16, 2017). NP

But if this is the case, a First Amendment purist might reply, why not drop the charade along with the malleable distinctions that make it possible, and declare up front that total freedom of speech is our primary value and trumps anything else, no matter what? The answer is that freedom of expression would only be a primary value if it didn't matter what was said, didn't matter in the sense that no one gave a damn but just liked to hear talk. There are contexts like that, a Hyde Park corner or a call-in talk show where people get to sound off for the sheer fun of it. These, however, are special contexts, artificially bounded spaces designed to assure that talking is not taken seriously. In ordinary contexts, talk is produced with the goal of trying to move the world in one direction rather than another. In these contexts—the contexts of everyday life—you go to the trouble of asserting that X is Y only because you suspect that some people are wrongly assert-ing that X is Z or that X doesn't exist. You assert, in short, because you give a damn, not about assertion—as if it were a value in and of itself—but about what your assertion is about. It may seem paradoxical, but free expression could only be a primary value if what you are valuing is the right to make noise; but if you are engaged in some purposive activity in the course of which speech happens to be produced, sooner or later you will come to a point when you decide that some forms of speech do not further but endanger that purpose.

#### Theories that value free speech instrumentally lead to infinite regress.

Tribe 78, Laurence H. [Professor of constitutional law at Harvard Law School and the Carl M. Loeb University Professor at Harvard University.] "Toward a Metatheory of Free Speech." Sw. UL Rev. 10 (1978): 237.

Second, I turn to the question of structure. The parts of a free speech theory must be related to the whole not solely as means are related to ends, but as elements of a composition are related to the total work. Infinite regress can be avoided only if harmony and appositeness, in addition to mere efficacy, provide the organizing principles of the theory's structure. To say that speech is valued because it facilitates self-government, 9 for example, is simply to push the inquiry a step back: why, after all, is self-government to be valued? Instrumental arguments invite such regress and promise to run out of replies before the inquisitive thirst is quenched. Only forthright claims of intrinsic value-claims rooted in an explicit vision of the necessary elements of the good--can avoid the endless chase of means after ends.20 To posit that expression is an element of the human may be controversial, but this at least moves discussion to the limits of language more directly than is otherwise possible with instrumental claims.2

#### Any consequentialist theory that values free speech instrumentally mandates particular restrictions on speech.

Solum 88, Solum, Lawrence Byard. [Carmach Waterhouse Professor of Law at Georgetown Law] "Freedom of communicative action: A theory of the first amendment freedom of speech." Nw. UL Rev. 83 (1988): 54.  
Second, the instrumentalist defense of free speech itself assumes that the citizenry is irrational when it comes to making at least one class of decisions, that is, decisions whether to restrict the freedom of speech. Why can't the electorate rationally decide that certain sorts of political speech do more harm than good and then democratically choose not to allow these sorts of speech? As long as there is sufficient information about the costs and benefits of allowing certain categories of speech, there is no instrumentalist reason for not allowing censorship in such cases. Thus, even if the general tendency of free speech were to produce better consequences, the theory must allow particular restrictions (or classes of restrictions) on free speech that could be demonstrated to produce, on-balance, better consequences.84 Indeed, a utilitarian theory would not only allow but would require such restrictions on free speech. Of course, self-government theorists could attempt to develop a very sophisticated utilitarian justification for democracy with a free speech constraint which dealt with the rationality objection. Such a theory would need to explain why democratic decisionmaking was rational in general, why it would lead to irrational results if decisions concerning what speech is to be allowed were made democratically, and why precommitment to a free speech guarantee is rational. This sort of utilitarian argument is woefully underdeveloped as of now.8 5 Thus, in the end, the instrumentalist interpretation of the self-government theory is unsatisfactory because it fails to explain why democratic decisionmaking is rational in general, but irrational when it comes to making decisions that limit freedom of speech.8

#### Consequentialism fails to justify protecting the current types of constitutionally protected speech – vote neg.

Solum 88, Solum, Lawrence Byard. [Carmach Waterhouse Professor of Law at Georgetown Law] "Freedom of communicative action: A theory of the first amendment freedom of speech." Nw. UL Rev. 83 (1988): 54.

The first and most basic problem with the self-government theory is its lack of fit with existing first amendment doctrine. The first amendment has been held to protect expression that does not seem obviously necessary to self-government, including artistic expression in the form of poems and plays. 76 Indeed, the Supreme Court has announced, "[O]ur cases have never suggested that expression about philosophical, social, artistic, economic, literary, or ethical matters... is not entitled to full First Amendment protection. '7 7 Of course, the theory may be reformed by stipulating that all speech (or all speech which actually receives first amendment protection) is necessary for effective self-government. Indeed, some advocates of the theory make this move.78 This expansion of the theory, however, seems ad hoc in nature. Moreover, as I argue below, the move to widen the bounds of political speech exacerbates other problems of the theory.

## A2 Alt-Right

1. N/U – it’s about perception – people believe free speech is infringed upon, and it is in private colleges
2. N/U – PC culture’s not a free speech issue -- people will be angry that they’re called out for racism no matter what

#### T – Bans inhibit the alt right: giving them freedom of speech gives platforms to express views and respectability which aids recruitment and enhances power

Parekh 12 [Parekh, Bhikhu, political theorist and Labour member of the House of Lords, (2012) ‘Is There a Case for Banning Hate Speech?’, in Herz, M. and Molnar, P. (eds.) The Content and Context of Hate Speech: Rethinking Regulation and Responses. Cambridge: Cambridge University Press, pp. 37–56.] bracketed for grammar

It is sometimes argued that banning hate speech drives extremist groups underground and leaves us no means of knowing who they are and how much support they enjoy. It also alienates them from the wider society, even makes them more determined and helps them recruit those attracted by the allure of forbidden fruit. This is an important argument and its force should not be underestimated. However, it has its limits. A ban on hate speech might drive extremist groups underground, but it also persuades their moderate and law-abiding members to dissociate themselves from these groups. When extremist groups go underground, they are denied the oxygen of publicity and the aura of public respectability. This makes their operations more difficult and denies them the opportunity to link up with other similar groups and recruit their members. While the ban might alienate extremist groups, it has the compensating advantage of securing the enthusiastic commitment and support of their target groups. Besides, beyond a certain point, alienation need not be a source of worry. Some religious groups are alienated from the secular orientation of the liberal state, inst as the communists and polyamoronsly inclined persons bitterly resent its commitment (respectively) to market economy and rnonogamy. We accept such forms of alienation as inherent in collective life and do not seek to redress them by abandoning the liberal state. The ban might harden the determination of some, but it is also likely to weaken [determination] that of those who seek respectability and do not want to be associated with ideas and groups considered so disreputable as to be banned, or who are deterred by the cost involved in supporting them. There is the lure of the prohibited, but there is also the attraction of the respectable.

#### This outweighs – a. magnitude -- private colleges have speech codes, so backlash happens regardless – only I can change group’s impact and scope, b. probability – things like bans of fighting words didn’t lead to backlash or strengthening of pro-fighting words groups, c. time frame – backlash fades as groups realize they can’t change policies

#### Yiannopoulos proves – the alt-right’s defense of free speech is a ploy to push their values into the mainstream – anger stems from rejection of racism, not censorship. Permitting bigoted speech only legitimizes the alt-right

Ellie Mae O'Hagan 2-27, 2-27-2017, "The ‘free speech debate’ is nothing of the sort, whatever the far right says," Guardian, https://www.theguardian.com/commentisfree/2017/feb/27/free-speech-debate-milo-yiannopoulos-alt-right-censorship, accessed 3-7-2017. NP

What do these two incidences tell us about the infernal free speech debate? They tell us that it isn’t really a debate about free speech at all; it’s a debate about acceptable speech. Apparently Yiannopoulos could go on to have a glittering career after calling an ex-employee “a common prostitute” and threatening to blackmail her after she complained about unpaid wages. Apparently it’s fine for someone like him to occupy a considerable public platform after he encouraged the racist and misogynistic targeting of actor Leslie Jones. Public figures who insisted on Yiannopoulos’s right to free speech after all these incidences, but not after he appeared to condone paedophilia, aren’t making a statement about liberal values; they are simply revealing what they themselves are willing to tolerate. His demise reveals that at the end of the day we all believe there should be limits to freedom of speech. The only difference between us is where we draw the line. Moreover, the pint-sized moral panic over a single seminar at the University of Sus,,,sex suggests that – for the right – freedom of speech only travels in one direction. As soon as anyone dissents from their enforced values and behaviour, all hell breaks loose. Remember when the right lost its mind because Jeremy Corbyn’s bow on Remembrance Day was deemed insufficiently dramatic? Or consider the traditional national angst over the possibility that some local authorities might use the word “Winterval” instead of “Christmas”. H If we were genuinely debating freedom of speech, and not in fact having an ideological battle over the values that define our public sphere, quite a few of Yiannopoulos’s defenders would probably have defended Corbyn and Winterval too. They certainly wouldn’t now be reaching for the smelling salts because 10 people at the University of Sussex decided to talk about rightwing views one lunchtime. The rise and fall of Milo Yiannopoulos – how a shallow actor played the bad guy for money Read more What is happening here is threefold: first, the right is so accustomed to its values dominating public discourse that many people within it have become grown-up babies who can’t bear to live in a society that isn’t constantly pandering to their sensitivities (what the writer Arwa Mahdawi describes as “populist correctness”). Second, others on the right are shrewdly exploiting the important principle of freedom of speech to ensure their ideas are the prevailing ones in society, by claiming any challenge to them as oppression. And finally, these groups are being aided and abetted by liberal dupes and cowardly university institutions, both of which are convinced that they’re engaged in an impartial debate about enlightenment values that isn’t actually taking place. Enough is enough. The insistence that we exist in some kind of neutral marketplace of ideas has led to a situation where deeply ideological positions can be put forward without any moral value being ascribed to them. “The most marginalised position in public discourse today is ‘good things are good and bad things are bad’,” as academic philosopher Tom Whyman puts it. Sexism and racism are, in fact, worse than equality – and public figures and institutions should not retreat into the belief that acknowledging as much amounts to some sort of discrimination. If we are going to have a debate, let’s debate what kind of society we want to build and what kind of values we want to live by. Let’s be clear that bigotry is intolerable. Because the Milo Yiannopouloses of this world know exactly what they’re doing – the only ones equivocating are us.

#### T – you’re playing right into their hands – the alt-right trains members to manipulate free discourse as propaganda for the alt-right message

Burley 16 Burley, Shane Contributor, Waging Nonviolence “How the Alt Right is trying to create a ‘safe space’ for racism on college campuses.” Waging Nonviolence. October 2016. GZ

A murmur began in May around Berkeley and the surrounding Bay Area as posters appeared overnight on the sides of buildings and wrapped on poles. Adorned with images of statues of antiquity, these classical images of European men depicted as gods were intended to light a spark of memory in the mostly white faces that passed by them. With lines like “Let’s become great again” printed on them, the posters were blatant in their calls for European “pride,” clearly connecting romanticized European empires of the past to the populism of Donald Trump today. The posters were put up by Identity Europa, one of the lesser-known organizations amid that esoteric constellation of reactionary groups and figures known as the “Alt Right.” They were part of a campaign around the country enticing college-age white people to join a new kind of white nationalist movement. While similar posters emerged elsewhere on the West Coast and Midwest, in central California they pointed toward a public event — one directed specifically toward the tradition of free speech at the University of California at Berkeley. Shortly after the posters went up, a brief announcement came from Alt Right leader Richard Spencer and his think-tank, the National Policy Institute. They, along with Identity Europa and other white nationalist organizations, were planning to hold an “Alt Right Safe Space” in Berkeley’s Sproul Plaza on May 6. The “safe space” is a play on words for the Alt Right, using the phrase that many leftist-oriented facilities use for a code of conduct that bans oppressive or bigoted behavior. Instead, they intended to make a “safe space” for white racism, the public declaration of which has become unwelcome in most any space. The plan was to show up and publicly proselytize on the problems of multiculturalism and the need for “white identity.” Identity Europa founder Nathan Damigo joined Spencer, along with Johnny Monoxide, a podcaster and blogger from the white nationalist blog The Right Stuff, which has become popular in Internet racialist circles (racialist being a term they use, since racist carries a negative connotation) for its internal lingo and open use of racial slurs. Alt Right media outlet Red Ice Creations teamed up with Monoxide to livestream the event, bringing the white nationalist crowd together with their international audience of conspiracy theorists, anti-vaccine activists and [alternative religion](http://www.vice.com/read/how-a-thor-worshipping-religion-turned-racist-456) proponents. While live streaming to their crowd, they came ready to argue. “This guy’s anti-dialogical! He’s anti-white,” yelled Damigo when challenged on the racialist content of his talking points. Race and identity For decades, both the institutional and radical left in the United States has relied on campus activism as a key part of its organizing base. From the antiwar movement of the 1960s to the development of feminist and queer politics to the growing youth labor and Black Lives Matter movement, colleges have been a center for political encounters and mobilizations. The radicalization of students has often leaned to the left because the left’s challenges to systems of power seem like a perfect fit for people expanding their understanding of the world. Amid major shifts in U.S. politics, a space has opened for revolutionary right-wing politics that have not traditionally been accessible to those outside of the most extreme ranks of the white nationalist movement. Today, the Alt Right is repackaging many of the ideas normally associated with neo-Nazis and KKK members into a new, more middle-class culture by using the strategies and language traditionally associated with the left. This means a heavy focus on argumentation and academic legitimacy, as well as targeting campus locations (and millennials) for recruitment. Until Hillary Clinton’s August 21 speech, most people had never heard of the Alt Right. However, it is a movement that has been growing for almost a decade in backroom conferences and racially-charged blogs. It is a kind of cultural fascism, one birthed out of the post-war fascist movements of Europe and given character by a culture of Twitter trolls and populist American anger. Yet, when it appears on campus, the Alt Right’s recruiting is hardly different from the Klan’s attempts to openly recruit members by leaving bags of leaflets and candy at people’s doorsteps. While the Alt Right Safe Space was put together as a joint effort with several nationalist organizations, Identity Europa emphasizes focusing on the youth most of all. The name and branding of Identity Europa are new, but the organization was started years ago as the National Youth Front. Nathan Damigo was an Iraq war veteran going to school at the University of California at Stanislaus when he took over the organization, shifting its ideological orientation from “civic nationalism” to “race realism,” the notion that whites have higher average IQ’s and a smaller propensity for crime than blacks. While Damigo notes that they have a “don’t ask, don’t tell” policy when it comes to gay members, he said that bi-racial and transgendered people would be turned away. For Damigo and others who trade in white nationalist talking points like “race realism,” the differences between races are significant. “Ethnic and racial or religious diversity can actually wreak havoc on a social system, and cause tons of problems,” Damigo said. “I do believe that there are differences between human populations … [T]he distribution of genes that affect behavior and intelligence are already known to not be equally distributed between all populations.” Identity Europa then represents a sort of “fraternal organization” where “European-descended” people can meet and network, working their way towards a kind of campus activism that challenges discourse and educational plans embedded with multiculturalism and egalitarianism. Such organizations have a long history on the right, stretching back to the 19th century fencing clubs and fraternities that popularized the pan-German ideas of Georg Schönerer — an immediate influence on Nazism. As organizers, however, Identity Europa do not follow the standard playbook for campus activism, which usually involves breaking broad political ideas into organized demands with reachable goals. Instead, they simply want to cultivate a subculture whose constituents will intervene in public discourse, thereby seeding their well-rehearsed talking points about racial inequality, white sovereignty and the return to heteronormative social roles. While Damigo brags about the growth of Identity Europa, it likely does not have membership beyond a few dozen people on campuses around the country at this point. However, there are reports of Identity Europa posters appearing at different places around the country almost weekly. Outreach to millennials Through its brand of social interruption, Identity Europa intends to foment a revolutionary right-wing culture — precisely the goal shared by Richard Spencer and his National Policy Institute. Spencer has been in right-wing politics for years, first joining as an assistant editor at the American Conservative after an article he published on the Duke Lacrosse sexual assault scandal made him a minor star. He later went to the controversial Taki’s Magazine, known for giving a voice to the shrinking paleoconservative movement and staffing dissident voices from the right who are regularly accused of racism. As he further cemented himself in this “dissident right” world, he developed the term “Alternative Right” to indicate the different strands that he saw uniting against multiculturalism, equality and American democracy. It was in this climate that Spencer founded the website Alternative Right, giving voice to a growing white nationalist movement that built on fascist intellectual traditions in Western Europe and challenged the right-wing connection to the American conservative movement. He eventually went on to take over the white nationalist think-tank, the National Policy Institute, or NPI, originally founded by William Regnery, using money inherited from the conservative publishing house, Regnery Publishing. The organization was meant to center on Samuel Francis, a former columnist with the Washington Times who was let go as he shifted further into white nationalism and associated with racialist organizations like American Renaissance and the Council of Conservative Citizens. Spencer took over the organization after Francis’s death, molding it into the intellectual core of the growing Alt Right movement. Spencer’s goal has always been the creation of a “meta-political” movement rather than one founded on contemporary political wedge issues. He hopes to draw together ideas like “white identitarianism” — a term used to brand the movement as being about European heritage — and the eugenics-invoking “human biodiversity.” Both are terms fostered by the so-called “European New Right” and its leading ideologues. What immediately distinguished Spencer’s role in the white nationalist movement from the older generation was his explicit focus on millennial outreach. For instance, his expensive NPI conferences are dramatically discounted for those under 30, and his new Radix Journal is marketed directly to an Internet culture of disaffected and angry white youths. He was an early proponent of podcasts as a main voice of the movement, a move that has given the Alt Right its conversational tone and made its ideas more accessible. With Damigo, Spencer developed the Alt Right Safe Space idea to exploit the projection of free speech on college campuses, despite the movement’s general rejection of human rights. “I think it’s symbolic as a way of saying, ‘we’re here,’” Spencer explained.

#### Outweighs – a. probability – groups with more training to be persuasive will likely win out, b. scope – legitimizing the alt-right lets them can reach more people

#### T - Alt-right hate speech on campus galvanizes the movement, serving as a gateway to more bigotry.

Lieberman 17, Dan. "Milo Yiannopoulos is trying to convince colleges that hate speech is cool." February 2, 2017. [www.cnn.com/2017/02/02/us/milo-yiannopoulos-ivory-tower/](http://www.cnn.com/2017/02/02/us/milo-yiannopoulos-ivory-tower/)

But some students who end up as the targets of Yiannopoulos's comments feel there should be no place for him or his views on campus. A transgender UC Davis student, who asked to be identified only as Barbara, told CNN she was too scared to be on campus during Yiannopoulos's scheduled visit and was fearful of his potential effect on her classmates. "The fear is with the folks who are gonna see him," she said. "He leaves. But the folks who are attending (his event) are the folks that I have to sit next to in classrooms." **Yiannopoulos isn't the only controversial speaker to try and capitalize on** what some are describing as a **"hate speech as free speech"** movement. **Spencer, the white nationalist,** told Mother Jones **that watching one of Yiannopoulos's speeches** at the University of Houston in September **was a "huge inspiration" and helped him realize "**what we are doing is known to people, **it's edgy** and dangerous**, it's** cool and **hip.** It's that thing our parents don't want us to do." Spencer spoke at Texas A&M University in December and says **he's planning to do his own college tour.** Nathan Damigo, another white nationalist and founder of a group called Identity Europa, says he's hoping to join Spencer on the tour. Damigo says he also sees Yiannopoulos as an inspiration and showed up at his event at UC Davis before it was canceled, hoping to find potential recruits for his own cause. "In a way, **we're all trying to do the same thing**," Damigo told CNN. "We're all trying **to bring narratives to these institutions that have been** intentionally **omitted.** We are trying to combat the (liberal) narratives here that are just being allowed to propagate here without any sort of confrontations." For his part, Yiannopoulos says he has nothing to do with Spencer or any white nationalists. "I don't have unsavory opinions about skin color ... what you are seeking to do, by associating me with people who have odious and disgusting opinions, is suggest that I somehow in some way tacitly enable these people," he said. "I don't. F\*ck you." But Oren Segal, director of the Anti-Defamation League's Center on Extremism, believes **Yiannopoulos "serves as a gateway" to more dangerous ideas.** "When you see white supremacists hanging outside of Milo's events to poach potential recruits, it speaks to exactly why Milo is potentially dangerous. **Milo is bringing his** misogyny and **hatred** and racism **onto campus, and people (are)** sort of maybe **considering it,** 'Oh, this is just ironic. He's just being -- you know, pushing the envelope.'" Segal said. "And so **it enables his ideology,** his messages to sort of seep in. **The next level is** maybe an openness to **more white supremacist ideas,** more hardcore believers. I think that's fundamentally dangerous." But Yiannopoulos said he doesn't believe his statements are that far from the mainstream. He sees himself as a crusader for free speech. "I have opinions that, frankly, a lot of people are thinking. They just won't tell people. They don't pollsters. They don't tell journalists. But they think it, which is why you're all so surprised when, you know, half the country voted for Trump. I hold perfectly respectable, reasonable opinions that half of America agrees with," he said. "So long as people are prevented from saying true things in public life for political correctness, there'll still be a need for me," he said. "And I'll never stop."

## A2 Backlash

#### Hate speech laws have normative influence from public support – prefer empirical examples – Australian hate speech laws have only garnered support after their implementation

Gelber and McNamara 15. Katharine Gelber and Luke McNamara. (Katharine Gelber is Professor of Politics and Public Policy at the University of Queensland. Professor McNamara was the Dean of the Faculty of Law at the University of Wollongong from 2007 to 2012.) The Effects of Civil Hate Speech Laws: Lessons from Australia. Law & Society Review 49 Law & Soc'y Rev. 631. 2015 Law and Society Association Law and Society. Pg 16. Review. NP 4/22/17.

In response, we argue that we have identified outcomes that one would be unlikely to find in countries without hate speech laws, as well as outcomes that arise from Australia's particular regulatory model. The first is the deliberate use of previous judgments under the civil law as a tool in seeking to dissuade speakers from engaging in hate speech. The second is the use of the existence of the laws as a threat or inducement to hate speakers to desist. The third is the symbolic feeling of protection that hate speech laws of any type (whether criminal or civil, whether actively enforced/litigated or not) give to community members, and in spite of the persistence of significant levels of hate speech in society. Members of targeted communities told us that the laws had value even if individuals sometimes failed to live up to them. To these we would add that the laws have become an accepted part of the Australian political landscape. An April 2014 opinion poll showed 88 percent of the public supporting the retention of federal hate speech laws (ABC News 2014). This shows a very large majority of the public supports the idea that hate speech laws are an appropriate component of the framework within which public debate takes place. This gives them a normative influence, and provides participants in public debate with a language they can employ to condemn hate speech. These are the important benefits that have been achieved from 25 years of hate speech laws in Australia.

## A2 Chilling Effect

#### Chilling effect is empirically disproven

Gelber and McNamara 15. Katharine Gelber and Luke McNamara. (Katharine Gelber is Professor of Politics and Public Policy at the University of Queensland. Professor McNamara was the Dean of the Faculty of Law at the University of Wollongong from 2007 to 2012.) The Effects of Civil Hate Speech Laws: Lessons from Australia. Law & Society Review 49 Law & Soc'y Rev. 631. 2015 Law and Society Association Law and Society. Pg 16. Review. NP 4/22/17.

What of the fourth and fifth claims, that hate speech laws have a chilling effect, discouraging people from engaging in robust political debate on important matters of public policy, or that they create free speech martyrs who use the regulatory system to gain prominence for their views? Our analysis of letters to the editor revealed little evidence that public discourse has been diminished over the past 25 years. Robust debates have been had on a broad range of issues including the land rights of Indigenous Australians, same-sex marriage, and the treatment of asylum-seekers. Our analysis revealed the continued expression of prejudice over time. The fact that we detected a shift away from more intemperate styles of language cannot be said to support the chilling effect claim. At the heart of this claim is a concern about the silencing of views and opinion. At the same time that Bolt claimed he was being "silenced" by hate speech laws, he was able to disseminate his views widely through prominent media attention (Gelber and McNamara 2013: 474-76). Therefore, although the distinction may be contentious, we distinguish between desirable and undesirable effects. Hate speech laws are designed to influence the terms in which individuals express their views in public (desirable), however, they are not designed to make certain topics "off limits" (undesirable). Our research suggests that the risk of a chilling effect has not been substantiated. Australians are willing to express robust views on a broad range of policy issues.

## A2 Counterspeech

#### Hate speech laws force productive conversations about the wrongness of bigotry – filing complaints against hate speakers means they’ll have to listen to the opinions of their targets, and that targets feel sufficiently supported to speak out. Outweighs on probability - otherwise, bigots are more likely to ignore criticisms. Plus, outweighs on magnitude – counter speech risks safety of minorities but complaint in disciplinary proceedings is structured.

#### Counter speech can’t solve -- initial exposure to beliefs makes them ingrained and difficult to challenge with reason – this outweighs. Minimizing initial exposure to problematic ideas outweighs.

Moles 6, Andrés. (Andres Moles read Philosophy at the National University of Mexico (UNAM) finishing in 2001, and received an MA in Philosophy and Social Theory (2003) and a PhD in Politics (2007) both at the University of Warwick.) Autonomy, Free Speech and Automatic Behaviour. Springer 2006

Audience-based autonomy defences of free speech argue that audience interests are better served by protecting freedom of expression.67 These defences claim that free speech serves auton- omy and critical reflection by offering a wide range of viewpoints whose relative merits audiences can assess. Free speech also offers audiences valuable information and evidence that helps them to decide different aspects of their conception of the good. It is also claimed – notably by J.S. Mill – that free speech forces people to criti- cally assess and defend the grounds of their own views when presented with alternatives. However, free speech also has its costs. It is highly contaminating: consider violent pornography and entertainment, the creation, transmission and enforcement of racial and gender stereotypes, and so on.68 Defences of free speech sometimes try to minimise these costs by advocating ‘more, better speechÕ.69 The idea is that through rational debate and discussion, audiences will autonomously come to realise that the content of stereotypes is false and based on prejudice. Free speech, then, would then have two benefits: it would fight racism and foster rational autonomy. This strategy is not without its problems. Many people who believe they are not racists still manifest racist reactions.70 It is dif- ficult to convince them that, regardless of what they think of them- selves, they sometimes react as racists. Moreover, it has been shown that sometimes trying not to respond according to the stereotype has the ‘ironic effect of increasing the frequency of stereotypical reactions.71 Similarly, it has been argued that we have a tendency to believe propositions we understand, even when we are explicitly told that they are false. Daniel Gilbert argues that due to the way our system of forming beliefs works, we have a tendency automatically to accept propositions we understand. Rejection requires effort. This second step can be inhibited when individualsÕ mental resources are depleted, for instance by devoting attention to other things, or by lack of sleep, or under torture, or time constraints. If the rejection process is interfered with, then individuals may accept propositions which they would otherwise reject.72 More, better speech seems not be able to cope with this prob- lem, mainly because it aims at rational, conscious processes of belief formation, while the challenges I am presenting here occur at automatic, non-conscious levels. Wilson and Brekke suggest that another strategy might be more successful: exposure control. Just as in the case of normal pollution, the best way of protecting oneself is avoiding being exposed to the polluting agent; the most effective strategy to fight mental contamination could be to avoid the sources of bias. This strategy is already used in certain domains. Teachers assess anonymous essays and exams, journals impose blind controls when considering submissions, and so on. Exposure control is not free of problems; first, the main issue about who is to control what people are exposed to remains open. Second, because we cannot neutralise every source of contamination, we need to categorise the weights of different forms of contamination (racial and gender based are particularly important). Regardless of these problems, it seems that controlling exposure to the serious sources of biasing is a necessary condition for autonomy. This in turn requires that social relations are sensitive to contamination and that the exposure to sources of contamina- tion is more or less socially controlled.

#### Counterspeech empirically fails – people don’t engage with controversial views

#### **Halbrooks 14** Ben Halbrooks (founder and executive director of the Fixed Point Foundation) “The Spiral of Silence” Larry Alex Taunton Blog September 2nd 2014 <http://larryalextaunton.com/blog/the-spiral-of-silence/> JW

#### “People who use Facebook and Twitter are less likely than others to share their opinions on hot-button issues, even when they are offline,” (emphasis added) says the AP, citing a new survey from the Pew Research Center and Rutgers University. According to the study’s findings, social media sees users shying away from discussing anything controversial and censoring themselves even beyond the web, going so far as to hinder the exchange of opinions in the public marketplace of ideas. Researchers call it the “spiral of silence” phenomenon. This is of particular interest to us, since we’ve noted before how, in a politically correct world, thoughtful, civil discourse has been largely suppressed. Part of Fixed Point’s mission, in fact, is to revitalize it. Far too many people are eager to chime in on issues where they know their audience agrees, but unwilling and fearful to address issues of controversy in any meaningful way. Meaningful is a key word there, because, of course, not all self-censorship is bad. The article concludes with that consideration, discussing the takeaways of Rutgers professor Keith Hampton, who helped conduct the study: While many people might say keeping political debate off Facebook is a matter of tact, Hampton said there is a concern that a person’s fear of offending someone on social media stifles debate. “A society where people aren’t able to share their opinions openly

#### Defense of counterspeech treats minority lives as disposable and fails by ignoring power imbalances

Delgado and Yun 94, Delgado, Richard, and David H. Yun. "Pressure Valves and Bloodied Chickens: An Analysis of Paternalistic Objections to Hate Speech Regulation." California Law Review 82 (1994): 871.

How valid is **this argument**? Like many paternalistic arguments, it **is offered** blandly, virtually **as an article of faith. In the nature of paternalism, those who make the argument are in a position of power, and** therefore **believe themselves able to make things so merely by asserting them as true.**90 They rarely offer empirical proof of their claims, because none is needed. **The social world is as they say** because it is their world: they created it that way.91 **In reality, those who hurl racial epithets do so because they feel empowered to do so.** 92 Indeed, **their principal objective is to reassert and reinscribe that power. One who talks back is perceived as issuing a direct challenge to that power. The action is seen as outrageous,** as calling for a forceful response. **Often racist remarks are delivered in several-on-one situations,** **in which responding in kind is foolhardy.** 93 **Many highly publicized cases of racial homicide began in just this fashion. A group began badgering a black person. The black person talked back, and paid with his life.**94 **Other racist remarks are delivered in a cowardly fashion, by means of graffiti** scrawled on a campus wall late at night **or** on **a poster** placed outside of a black student's dormitory door.95 **In these situations, more speech is,** of course, **impossible. Racist speech is rarely a mistake, rarely something that could be corrected** or countered **by discussion. What would be the answer to "Nigger, go back to Africa. You don't belong at the University"? "**Sir, you misconceive the situation. Prevailing ethics and constitutional interpretation hold that I, an African American, am an individual of equal dignity and entitled to attend this university in the same manner as others. Now that I have informed you of this, I am sure you will modify your remarks in the future"? 96 **The idea that talking back is safe for the victim or potentially educative for the racist simply does not correspond with reality. It ignores the power dimension to racist remarks, forces minorities to run very real risks, and treats a hateful attempt to force the victim outside the human community as an invitation for discussion. Even when successful, talking back is a burden. Why should minority undergraduates,** already charged with their own education, **be responsible constantly for educating others?**

#### Counterspeech fails – biases are too insidious and ingrained to be countered by rational arguments

Sanders 97, Lynn M. *Against deliberation.* Political Theory June 1997 v25 n3 p347(30)

Some critics have noticed the manifestation of this disjuncture in the abstract talk of democratic theorists. Indeed, this abstraction may be absolutely necessary for proponents of deliberative democracy, because acknowledgment of the hardest problems, that is, the systematic disregard of ascriptively defined groups such as women and Blacks, would violate the deliberative tenet to attend to the force of argument rather than the interests of particular groups (Phillips 1995, 155 ff.). Indeed, democratic citizens as described in these theories seem to live on another planet (quite literally, in the case of Ackerman 1980): they are devoid of race, class, and gender and all the benefits and liabilities associated by Americans with these features. Abstraction from these ascriptive characteristics--their disregard--clearly assists attempts to end discrimination based upon them; as well, however, abstraction deprives theorists of a way to notice systematic patterns of exclusion. A deeper, more difficult problem than abstraction lurks. Even if democratic theorists notice the inequities associated with class and race and gender and, for example, recommend equalizing income and education to redistribute the resources needed for deliberation--even if everyone can deliberate and learn how to give reasons--some people’s ideas may still count more than others. Insidious prejudices may incline citizens to hear some arguments and not others. Importantly, this prejudice may be unrecognized by those citizens whose views are disregarded as well as by other citizens. Proponents of deliberation are especially badly equipped to address this problem. They depend on open arguments against prejudice to overcome it, and on the susceptibility of prejudice to reason. Not only do they believe in the existence of settings where nothing matters except for an idea’s intellectual force and its communal utility, as in Habermas’s ideal speech situation (Habermas [1962] 1992; Calhoun 1992) or in Ackerman’s insistence that a speaker’s superiority can never tee invoked as a reason to prefer an idea(1980, 4, 11); they also expect prejudices to be challenged in deliberative settings and for others to "face up" to them (Gutmann and Thompson 1996). When disregard based in prejudice goes unrecognized by both those who are subject to it and those who are prejudiced, prejudices cannot possibly be challenged. Prejudice and privilege do not emerge in deliberative settings as bad reasons, and they are not countered by good arguments. They are too sneaky, invisible, and pernicious for that reasonable process. So worrying about specifying what counts as a good argument, or trying to enhance reason-giving either via the formulation of better rules and procedures or by providing the time, money, and education necessary to become a responsible deliberative citizen, does not engage some of the most serious challenges to the possibility of achieving democratic deliberation. Some people might be ignored no matter how good their reasons are, no matter how skillfully they articulate them, and when this happens, democratic theory doesn’t have an answer, because one cannot counter a pernicious group dynamic with a good reason. Sometimes, giving reasons isn’t anything like the right project and suggesting that the disregarded argue against prejudice or discrimination is offensive in and of itself.(4)

## A2 Democratic Deliberation

## A2 Goes Underground

#### T – pushing speech underground is good – verbalizing hateful ideas gives the speaker a sense of legitimacy and incentivizes others to copy them

Delgado and Yun 94. Richard Delgado David H. Yun. Pressure Valves and Bloodied Chickens: An Analysis of Paternalistic Objections to Hate Speech Regulation. scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1712&context=californialawreview. July 1994. Volume 82, Issue 4, Article 5. California Law Review. NP 4/22/17.

The pressure valve argument holds that rules prohibiting hate speech are unwise because they increase the danger racism poses to minorities. 50 Forcing racists to bottle up their dislike of minority group members means that they will be more likely to say or do something hurtful later. Free speech thus functions as a pressure valve, allowing tension to dissipate before it reaches a dangerous level. 1 Pressure valve proponents argue that if minorities understood this, they would oppose antiracism rules. The argument is paternalistic; it says we are denying you what you say you want, and we are doing it for your own good. The rules, which you think will help you, will really make matters worse. If you knew this, you would join us in opposing them. Hate speech may make the speaker feel better, at least temporarily, but it does not make the victim safer. Quite the contrary, the psychological evidence suggests that permitting one person to say or do hateful things to another increases, rather than decreases, the chance that he or she will do so again in the future. 2 Moreover, others may believe it is permissible to follow suit. 3 Human beings are not mechanical objects. Our behavior is more complex than the laws of physics that describe pressure valves, tanks, and the behavior of a gas or liquid in a tube. In particular, we use symbols to construct our social world, a world that contains categories and expectations for "black," "woman," "child," "criminal," "wartime enemy," and so on.5 4 Once the roles we create for these categories are in place, they govern the way we speak of and act toward members of those categories in thefuture.55

#### Empirics discount the idea of hateful ideas resurfacing in more virulent ways

Delgado and Stefancic 9. Richard Delgado (University Professor, Seattle University School of Law; J.D., 1974, University of California, Berkeley) Jean Stefancic\*\* (Research Professor, Seattle University School of Law; M.A., 1989, University of San Francisco.). FOUR OBSERVATIONS ABOUT HATE SPEECH. wakeforestlawreview.com/wp-content/uploads/2014/10/Delgado\_LawReview\_01.09.pdf pg 363-364. NP 4/22/17.

What about harm to the hate speaker? The individual who **holds** his or her tongue for fear of official sanction may be momentarily irritated. But “bottling it up” seems not to inflict serious psychological or emotional damage.91 Early in the debate about hate speech, some posited that a prejudiced individual forced to keep his impulses in check might become more dangerous as a result.92 By analogy to a pressure valve, he or she might explode in a more serious form of hate speech or even a physical attack on a member of the target group.93 But studies examining this possibility discount it.94 Indeed, the bigot who expresses his sentiment aloud is apt to be more dangerous, not less, as a result. The incident “revs him up” for the next one, while giving onlookers the impression that baiting minorities is socially acceptable, so that they may follow suit.95 A recently developed social science instrument, the Implicit Association Test (“IAT”), shows that many Americans harbor measurable animus toward racial minorities.96 Might it be that hearing hate speech, in person or on the radio, contributes to that result?97

## A2 Legal Precedent

#### The First Amendment never protected minorities – the civil rights movement’s success relied on defiance of law

Delgado and Yun 94. Richard Delgado David H. Yun. Pressure Valves and Bloodied Chickens: An Analysis of Paternalistic Objections to Hate Speech Regulation. scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1712&context=californialawreview. July 1994. Volume 82, Issue 4, Article 5. California Law Review. NP 4/22/17.

Many absolutists and defenders of the First Amendment urge that the First Amendment historically has been a great friend and ally of social reformers. Nadine Strossen, for example, argues that without free speech, Martin Luther King, Jr. could not have moved the American public as he did. 8 Other reform movements also are said to have relied heavily on free speech.6 9 This argument, like the two earlier ones, is paternalistic-it is based on the supposed best interest of minorities. If they understood their own best interest, the argument goes, they would not demand to bridle speech. The argument ignores the history of the relationship between racial minorities and the First Amendment. In fact, minorities have made the greatest progress when they acted in defiance of the First Amendment.70 The original Constitution protected slavery in several of its provisions,7 1 and the First Amendment existed contemporaneously with slavery for nearly 100 years. Free speech for slaves, women, and the propertyless was simply not a major concern for the drafters, who appear to have conceived the First Amendment mainly as protection for the kind of refined political, scientific, and artistic discourse they and their class enjoyed. Later, of course, abolitionism and civil rights activism broke out.72 But an examination of the role of speech in reform movements shows that the relationship of the First Amendment to social advance is not so simple as free speech absolutists maintain. In the civil rights **movement** of the 1960s, for example, Martin Luther King, Jr. and others did use speeches and other symbolic acts to kindle America's conscience.73 But as often as not, they found the First Amendment (as then understood) did not protect them.7 4 They rallied and were arrested and convicted; sat in, were arrested and convicted; marched, sang, and spoke and were arrested and convicted. 75 Their speech was seen as too forceful, too disruptive. Many years later, to be sure, their convictions would sometimes be reversed on appeal, at the cost of thousands of dollars and much gallant lawyering. But the First Amendment, as then understood, served more as an obstacle than a friend. 76 Why does this happen? Narrative theory shows that we interpret new stories in terms of the old ones we have internalized and now use to judge reality.7 7 When new stories deviate too drastically from those that form our current understanding, we denounce them as false and dangerous. The free market of ideas is useful mainly for solving small, clearly bounded disputes.78 History shows it has proven much less useful for redressing systemic evils, such as racism. 79 Language requires an interpretive paradigm, a set of shared meanings that a group agrees to attach to words and terms.80 If racism is deeply inscribed in that paradigm-woven into a thousand scripts, stories, and roles-one cannot speak out against it without appearing incoherent. An examination of the current landscape of First Amendment exceptions reveals a similar pattern. Our system has carved out or tolerated dozens of "exceptions" to the free speech principle: conspiracy; libel; copyright; plagiarism; official secrets; misleading advertising; words of threat; disrespectful words uttered to a judge, teacher, or other authority figure; and many more. 2 These exceptions (each responding to some interest of a powerful group)83 seem familiar and acceptable, as indeed perhaps they are. But a proposal for a new exception to protect some of the most defenseless members of society, 18-year old black undergraduates at predominantly white campuses, immediately produces consternation: the First Amendment must be a seamless web. It is we, however, who are caught in a web, the web of the familiar. The First Amendment seems to us useful and valuable. It reflects our interests and sense of the world. It allows us to make certain distinctions, tolerates certain exceptions, and functions in a particular way we assume will be equally valuable for others. But the history of the First Amendment, as well as the current landscape of doctrinal exceptions, shows that it is far more valuable to the majority than to the minority, far more useful for confining change than for propelling it.8 "

## A2 Martyrdom

#### Martyr effect is empirically disproven –people that violate laws are vilified

Gelber and McNamara 15. Katharine Gelber and Luke McNamara. (Katharine Gelber is Professor of Politics and Public Policy at the University of Queensland. Professor McNamara was the Dean of the Faculty of Law at the University of Wollongong from 2007 to 2012.) The Effects of Civil Hate Speech Laws: Lessons from Australia. Law & Society Review 49 Law & Soc'y Rev. 631. 2015 Law and Society Association Law and Society. Pg 16. Review. NP 4/22/17.

Yet a sense of proportion is required here. No other case in over two decades of civil litigation has triggered a comparable martyr effect. Recalcitrant Holocaust denier Frederick Toben attempted to adopt a martyr position when he was found to have breached the same federal racial hatred law years earlier. n39 His refusal to abide by orders of the Federal Court to remove Holocaust denial material from his Web site resulted in 24 contempt of court findings and, ultimately, a 3 month jail term for contempt of court (Akerman 2009). However, **in** public discourse this attempt served to consolidate his infamy and status as a powerful illustration of precisely why hate speech laws were enacted in the first place (Aston 2014; Richardson 2014). Two distinctive features of Australia's hate speech laws are noteworthy here. First, given, that most transgressions of the law are addressed in confidential conciliation, with less than 2 percent resulting in court or tribunal decisions that enter the public domain, opportunities for martyrdom are rare. Second, because the laws rely overwhelmingly on civil remedies, they tend not to produce the criminal sanctions on which the claimed martyr effect is based. The Bolt controversy does not justify a general conclusion that hate speech laws necessarily produce a counterproductive martyr effect, as it was an atypical event in the history of civil hate speech laws in Australia. Conclusions Our project speaks both to the utility and the inefficacy of the regulatory model adopted by Australia 25-year ago. We have found that Australian hate speech laws provide some remedies. Members of targeted communities are able to lodge complaints with a human rights authority, in a process that reassures them that the law can assist them, and reminds them that the polity has enacted provisions that enable them to seek redress for hate speech. Further, the laws have a direct educative function. Although a very small proportion of cases reach a court or tribunal, those decisions that do enter the public domain have established important precedents that have been subsequently used in [\*658] advocacy. The laws also have indirect educative value, both in terms of setting a standard for public debate and in the sense that (even unsuccessful) complaints can be used to raise awareness about appropriate ways of expressing oneself in public. Letter writers demonstrated an awareness of the existence of hate speech laws, and media entities have internalised the responsibility to educate their staff about those laws. There has been a significant reduction in the amount of prejudice expressed in published letters to the editor. We found no evidence of an undesirable chilling effect on public discourse, and considerable evidence that members of the public continue to express themselves on a range of controversial policy issues. We also found little evidence that Australia's regulatory framework produces an unwanted martyr effect, with only one case in the last 25 years having done so. Finally, targeted communities expressed over-whelming support for the value and retention of the laws, as a symbol of their protection and the government's opposition to discrimination.

## A2 Hate Speech Sparks Protests

## A2 PC Culture

#### Your claims are media hype not based in fact – the left has not cracked down on teachers nor suppressed diverging viewpoints – prefer empirical evidence.

Fish 94, Stanley Eugene. There's No Such Thing As Free Speech : And It's a Good Thing, Too. New York: Oxford University Press, 1994. eBook Collection (EBSCOhost), EBSCOhost (accessed January 16, 2017). NP

First, as a matter of fact, the picture of a campus world seized by a radically politicized left professoriate that has trashed the traditional curriculum and terrorized its ideological opponents in ways reminiscent of Senator McCarthy is simply unsupported by the evidence. In a recent cover story, Time magazine, no friend to progressive trends in the academy, declared this highly polemical picture of academic life "flatly absurd." It asserted, the comparison to McCarthyism could only be made by people who either don't know or don't wish to remember what the senator from Wisconsin and his pals actually did . . . the firing of campus professors in mid-career, the inquisitions by the House Un-American Activities Committee on the content of libraries and courses, the campus loyalty oaths, the whole sordid atmosphere of persecution, betrayal and paranoia. The number of conservative academics fired by the left thought police is, by contrast, zero. (Robert Hughes, Feb. 3, 1992, p. 46) Time's judgment is backed up by every survey that has been conducted, by surveys that reveal a remarkable stability in the curriculum, by surveys that reveal a professoriate still from 80 to 90 percent male and white, by surveys that show 97 percent of colleges reporting no undue pressure on conservative scholars and teachers. This general finding can be further substantiated by the facts about the English department at Duke, which has been offered by Mr. D'Souza and others as the very symbol of what has gone wrong; I say flatly that there is no relationship whatsoever between the media characterization of that department and the reality of its day-today life, and I am prepared to back up that statement with massive documentation

#### Criticisms of political correctness presume the possibility of a view from nowhere, which can not exist – all speech is partial

Fish 94, Stanley Eugene. There's No Such Thing As Free Speech : And It's a Good Thing, Too. New York: Oxford University Press, 1994. eBook Collection (EBSCOhost), EBSCOhost (accessed January 16, 2017). NP

These days you cannot mention politics without calling up the specter of" political correctness." "Politically correct" is a dismissive accusation that only makes sense if it is opposed to a superior alternative. Presumably, what is deficient about "political correctness" is that its judgments of right and wrong are made from an angle, from a site of interest, from a position colored by partisan desires. Really correct correctness, on the other hand, would proceed from no angle, no interest, no partisan desire, but from the perspective of truth. The trouble with this requirement, however, is that no human being could meet it because no human being sees truth directly, stands to the side of interest, sees by more than partisan lights. There is no really correct correctness, at least not any we can validate by standards that are themselves not political. "Political correctness" is simply a pejorative term for the condition of operating on the basis of a partial vision, and since that is the condition of all of us, we are all politically correct. To be sure, we are not all politically correct in the same way; the products of different histories, we are all committed to truths, but to truths perpetually in dispute. That is what it means to be partial, or, in an older and preferable vocabulary, fallen. It is with that same vocabulary in mind that I would propose an emendation, the substitution for "politically correct" of the more accurate phrase "faithfully correct," correct from the vantage point of the different faiths we involuntarily inhabit. We are all faithfully correct, true to the convictions that now grasp us and open to the possibility that in the fullness of time we may be grasped by better convictions. This is at once our infirmity and our glory. It is our infirmity because it keeps us from eternity, and it is our glory because it sends us in search of eternity and keeps us from premature rest.

## A2 Spillover

#### Spillover effect is empirically disproven – other countries with hate speech codes are not totalitarian

Sean McElwee 13, (research associate at Demos) 7-24-2013, "The Case for Censoring Hate Speech," Huffington Post, http://www.huffingtonpost.com/sean-mcelwee/hate-speech-online\_b\_3620270.html, accessed 2-22-2017. NP

While we encourage you to challenge ideas, institutions, events, and practices, we do not permit individuals or groups to attack others based on their race, ethnicity, national origin, religion, sex, gender, sexual orientation, disability or medical condition. If anything, the groups to which York refers are nudging Facebook towards actually enforcing its own rules. People who argue against such rules generally portray their opponents as standing on a slippery precipice, tugging at the question "what next?" We can answer that question: Canada, England, France, Germany, The Netherlands, South Africa, Australia and India all ban hate speech. Yet, none of these countries have slipped into totalitarianism. In many ways, such countries are more free when you weigh the negative liberty to express harmful thoughts against the positive liberty that is suppressed when you allow for the intimidation of minorities. As Arthur Schopenhauer said, "the freedom of the press should be governed by a very strict prohibition of all and every anonymity." However, with the Internet the public dialogue has moved online, where hate speech is easy and anonymous. Jeffrey Rosen argues that norms of civility should be open to discussion, but, in today's reality, this issue has already been decided; impugning someone because of their race, gender or orientation is not acceptable in a civil society. Banning hate speech is not a mechanism to further this debate because the debate is over. As Jeremy Waldron argues, hate speech laws prevent bigots from, "trying to create the impression that the equal position of members of vulnerable minorities in a rights-respecting society is less secure than implied by the society's actual foundational commitments." Some people argue that the purpose of laws that ban hate speech is merely to avoid offending prudes. No country, however, has mandated that anything be excised from the public square merely because it provokes offense, but rather because it attacks the dignity of a group -- a practice the U.S. Supreme Court called in Beauharnais v. Illinois (1952) "group libel." Such a standard could easily be applied to Twitter, Reddit and other social media websites. While Facebook's policy as written should be a model, it's enforcement has been shoddy. Again, this isn't an argument for government intervention. The goal is for companies to adopt a European-model hate speech policy, one not aimed at expunging offense, but rather hate. Such a system would be subject to outside scrutiny by users. If this is the standard, the Internet will surely remain controversial, but it can also be free of hate and allow everyone to participate. A true marketplace of ideas must co-exist with a multi-racial society open to people of all genders, orientations and religions, and it can.

## A2 Reverse Enforcement

#### If protests are effective then people can protest against misapplication of hate speech codes – that’s net preferable – administrators can’t be held accountable for failing to address racism, but can be for using a policy meant to target racists against minorities

#### T – misappropriations of hate codes will lead to backlash and their eventual repeal since they’d contradict the policies’ initial intent – this fosters important discussions that debunk reverse racism and push people to better understand modern oppression

#### Empirical evidence denies reverse enforcement claims – prefer my evidence – it’s U.S. specific

Delgado and Yun 94. Richard Delgado David H. Yun. Pressure Valves and Bloodied Chickens: An Analysis of Paternalistic Objections to Hate Speech Regulation. scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1712&context=californialawreview. July 1994. Volume 82, Issue 4, Article 5. California Law Review. NP 4/22/17.

A second paternalistic argument is that enactment of hate speech rules is sure to hurt minorities because the new rules will be applied against minorities themselves.61 A vicious insult hurled by a white person to a black will go unpunished, but even a mild expression of exasperation by a black motorist to a police officer or by a black student to a professor, for example, will bring harsh sanctions. The argument is plausibile because certain authorities are racist and dislike blacks who speak out of turn, and because a few incidents of blacks charged with hate speech for innocuous behavior have occurred. Nadine Strossen, for example, asserts that in Canada, shortly after the Supreme Court upheld a federal hate speech code, prosecutors began charging blacks with hate offenses. 62 But the empirical evidence does not suggest that this is the pattern, much less the rule. Police and FBI reports show that hate crimes are committed much more frequently by whites against blacks than the reverse. 63 Statistics compiled by the National Institute Against Violence and Prejudice confirm what the police reports show, that a large number of blacks and other minorities are victimized by racist acts on campus each year.' Moreover, the distribution of enforcement seems to be consistent with commission of the offense. Although an occasional minority group member may be charged with a hate crime or with violating a campus hate speech code, these prosecutions seem rare.6 5 Racism, of course, is not a one-way street; some minorities have harassed and badgered whites. Still, the reverse-enforcement objection seems to have little validity in the United States. A recent study of the international aspects of hate speech regulation showed that in repressive societies, such as South Africa and the former Soviet Union, laws against hate speech have indeed been deployed to stifle dissenters and members of minority groups.6 6 Yet, this has not happened in more progressive countries.67 The likelihood that officials in the United States would turn hate speech laws into weapons against minorities seems remote.

#### Non-unique: minorities have been excluded from First Amendment protection – black protest, even when lawful, will always been seen as too dangerous

Delgado and Yun 94. Richard Delgado David H. Yun. Pressure Valves and Bloodied Chickens: An Analysis of Paternalistic Objections to Hate Speech Regulation. scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1712&context=californialawreview. July 1994. Volume 82, Issue 4, Article 5. California Law Review. NP 4/22/17.

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### A2 Mich

#### No impact – the Mich policy was struck down

Welch 14, Benjamin, (University of Nebraska-Lincoln) "An Examination of University Speech Codes’ Constitutionality and Their Impact on High-Level Discourse" (2014). Theses from the College of Journalism and Mass Communications. Paper 40. NP 2/22/17.

The first prominent speech code to be struck down in court was the University of Michigan’s “Policy on Discrimination and Discriminatory Harassment of Students in the University Environment” in the 1989 case Doe v. University of Michigan.22 Like other universities, Michigan adopted a speech code in 1988 after a series of efforts to quell and discourage racism, homophobia, sexism, and other alleged persecutions of minority groups. While on campus, students could be punished for displaying the following behaviors: 1. Any behavior, verbal or physical, that stigmatizes or victimizes an individual on the basis of race, ethnicity, religion, sex, sexual orientation, creed, national origin, ancestry, age, marital status, handicap or Vietnam-era veteran status…. 2. Sexual advances, requests for sexual favors, and verbal or physical conduct that stigmatizes or victimizes an individual on the basis of sex or sexual orientation….23 An accompanying guide soon followed the policy, which provided an example of sanctionable behaviors and conduct qualifying as “harassment,” which included: 1. A male student makes remarks in class like "Women just aren't as good in this field as men," thus creating a hostile learning atmosphere for female classmates. 2. Male students leave pornographic pictures and jokes on the desk of a female graduate student. 3. You display a confederate flag on the door of your room in the residence hall. 4. You laugh at a joke about someone in your class who stutters.24

# Specific Aff Stuff

## Autonomy Justification

#### Autonomy based justifications for free speech fail – autonomy of the listener necessitates a right to not hear certain ideas

Solum 88, Solum, Lawrence Byard. [Carmach Waterhouse Professor of Law at Georgetown Law] "Freedom of communicative action: A theory of the first amendment freedom of speech." Nw. UL Rev. 83 (1988): 54.  
A second feature of Scanlon's view is that it is audience- rather than speaker-centered. For Scanlon, the freedom of expression is primarily a right of audiences to make autonomous decisions whether to believe in or act on the content of speech; the freedom is not one of speakers to speak. Thus, Scanlon's theory suggests that the audience may consent not to hear opinions it detests. In addition, on this view the freedom of expression provides no grounds for protecting a speaker who merely wishes to bear witness that she holds a view and not to provide new arguments or grounds for her opinion.101 Those whose opinions are well known or have been adequately presented could be denied the opportunity to communicate without a violation of freedom of expression, if Scanlon's theory is correct.10 2 Listener autonomy thus fails as a complete account of the freedom of expression. The theory's exclusive focus on listeners fails to capture the dialogic nature of communication.10 3 Communication situations necessarily involve both speakers and audiences. The constitutional guarantee of free speech is impoverished by excluding consideration of the interests of the speaker from a theory of the right. The critique of the listener autonomy theory leads naturally to a consideration of the speaker; the interests of speakers in expressing themselves is the focus of the next Section.

#### Scanlon’s Millian principle justifies broad restrictions on protected speech (e.g. demonstrations).

#### Solum 88, Solum, Lawrence Byard. [Carmach Waterhouse Professor of Law at Georgetown Law] "Freedom of communicative action: A theory of the first amendment freedom of speech." Nw. UL Rev. 83 (1988): 54.

One distinctive characteristic of the theory is Scanlon's belief that his theory of the freedom of expression is an important advance over theories which focus on the categories of expression that should be protected. Acts of expression can be violent and destructive and hence should not be privileged as a class. The proper question, says Scanlon, is not whether a given act is expression or action, but whether the justification for the restriction on expression is ruled out by the Millian principle. Scanlon's theory, thus, focuses on the characteristics of the potential violation of the freedom of expression rather than on the characteristics of the protected expression.99 The Millian principle's focus on justification as the basis for invalidating a restriction on speech also grounds one line of critique. As Scanlon recognizes, the Millian principle does not rule out the banning of all demonstrations (if justified by a concern with traffic), the banning of all political meetings (if justified by a fear of disorder), or a ban on all newspapers (if justified by a desire to conserve trees). 1 00 A theory of freedom of expression limited to evaluation of the justifications offered for a restriction on communication pays inadequate attention to the positive value of expression for social and political communities. A society that legislated to forbid an open and robust discussion of moral, political, cultural, or scientific issues would be impoverished even if the restrictions on expression all conformed to the Millian principle. Perhaps more troublesome than the censorship which the Millian principle would allow is the speech it would protect. Because the Millian principle rules out regulation of speech based on the falsity of the view communicated, it would appear to rule out the regulation of libel, which receives some first amendment protection, and even fraud, which is noncontroversially outside of first amendment protection.

## Constitutionality/Law

#### Informal law mandates institutions break with formal constitutional precedent and regulate constitutionally protected speech – that outweighs – informal norms are enforced and gain social legitimacy in a way formal law can not

Gould 5, J. B. (2005). Speak No Evil : The Triumph of Hate Speech Regulation. Chicago: University of Chicago Press. P 186-187.

The result is a political divide, where, as Nielsen says, the traditional First Amendment theory of hate speech “remains firmly in control of legal and political institutions.”52But, just as important are the countervailing legal or constitutional norms that exist, and are practiced, in civil society by a public that is skeptical about the courts’ powers. People do not tolerate hate speech, they do not acknowledge a right to offensive public speech, because the courts have declared the First Amendment requires as much. To the contrary, large numbers of the public reject a right to hate speech and believe that they are entitled to be free from hurtful invective. In this respect, they have the sup-port of several influential institutions of civil society, which reinforce the norm that hate speech is to be prohibited and informally enforce these ideas through their policies and practices. My point, then, is not that hate speech regulation has triumphed over the formal law but that it triumphs in the face of formal constitutionalism. What we see is a battle in the contact zone between formal and informal law, be-tween formal and mass constitutionalism. Traditional legal theory tells us that formal law should prevail, that if one wants to secure constitutional rights he appeals to and wins the support of legal institutions, including the courts and legislatures. But what mass constitutionalism—and the hate speech debate—reveal is that legal and constitutional norms may exist in place of, in the face of, or alongside the formal law. More than being inert or symbolic, the informal law may guide and inform mass understandings, expectations, and practices in a way that formal law cannot command. This is particularly true when, as Nielsen’s work shows, the debate between mass and formal constitutionalism remains stuck in the contact zone not because people reject the underlying constitutional norm but because they have doubts and suspicions about the formal law’s ability to enforce that doctrine and protect them.

#### Constitutional rights to free speech don’t apply once on campus – school’s educational missions take precedence

Post 91. Robert C. Post, Racist Speech, Democracy, and the First Amendment, 32 Wm. & Mary L. Rev. 267 (1991), <http://scholarship.law.wm.edu/wmlr/vol32/iss2/4>. NP 3/11/17.

The regulation of racist speech within public institutions of higher learning, therefore, does not turn on the value of democratic self-governance and its realization in public discourse. Instead the constitutionality of such regulation depends upon the logic of instrumental rationality, and specifically upon three factors: (1) the nature of the educational mission of the university; (2) the instrumental connection of the regulation to the attainment of that mission; and (3) the deference that courts ought to display toward the instrumental judgment of institutional authorities.22 The current controversy regarding the constitutionality of regulating racist speech on university and college campuses may most helpfully be interpreted as a debate about the first of these factors, the constitutionally permissible educational objectives of public institutions of higher learning.225 **Courts have advanced** at least three different concepts of those objectives. The most traditional concept, which I refer to as "**civic education,"** views public education as an instrument of community life, and holds "that respect for constituted authority and obedience thereto is an essential lesson to qualify one for the duties of citizenship, and that the schoolroom is an appropriate place to teach that lesson. '22 6 Civic education conceptualizes instruction as a process of cultural reproduction, whereby community values are authoritatively handed down to the young. The **validity of those values is largely taken for granted, and there is a strong tendency to use them as a basis for the regulation of speech in the manner of the traditional common law.** The concept of civic education held sway in the years before the Warren Court and has recently been forcefully resurrected with regard to the regulation of speech within high schools. Thus in Bethel School District No. 408 v. Fraser2 2 the Court upheld the punishment of a high school student for having delivered an "offensive" and "indecent" student-government speech.22 8 The Court reasoned that "the objectives of public education" included "the 'inculcat[ion of] fundamental values necessary to the maintenance of a democratic political system.' "229 Among these values were "the habits and manners of civility as . . . indispensable to the practice of self-government."' ' 0 The undoubted freedom to advocate unpopular and controversial views in schools and classrooms must be balanced against the society's countervailing interest in teaching students the boundaries of socially appropriate behavior.... .. . [S]chools must teach by example the shared values of a civilized social order. . . . The schools, as instruments of the state, may determine that the essential lessons of civil, mature conduct cannot be conveyed in a school that tolerates lewd, indecent, or offensive speech and conduct such as that indulged in by this confused boy.2 1 ' That the concept of civic education would lead to similar conclusions if applied to institutions of higher learning is evidenced by Chief Justice Burger's 1973 dissent in Papish v. University of Missouri Curators: 2 In theory, at least, a university is not merely an arena for the discussion of ideas by students and faculty; it is also an

## Curry/Abstraction Bad

Affirming is abstract. Vote neg.

#### Your use of the First Amendment as a reference point abstracts away from material harm and reaffirms the notion that speech is divorced from reality

Fish 94, Stanley Eugene. There's No Such Thing As Free Speech : And It's a Good Thing, Too. New York: Oxford University Press, 1994. eBook Collection (EBSCOhost), EBSCOhost (accessed January 16, 2017). NP

This is where the idea that there is no such thing as a false idea (and therefore no such thing as a true idea, like the idea that women are full-fledged human beings or the idea that Jews shouldn't be killed) gets you; it prevents you, as a matter of principle, from inquiring into the real-world consequences of allowing certain forms of so-called speech to flourish. Be-hind the principle (that there is no such thing as a false idea) lies a vision of human life as something lived largely in the head. There is an entire book to be written about the stigmatization and devaluation of the body in First Amendment jurisprudence, but for the moment I will point out that First Amendment jurisprudence works only if you assume that mental activities, even when they emerge into speech, remain safely quarantined in the cortex and do not spill over into the real world, where they can inflict harm.

#### Your absolutist affirmation of freedom of speech abstracts away from materiality and particularity

Fish 94, Stanley Eugene. There's No Such Thing As Free Speech : And It's a Good Thing, Too. New York: Oxford University Press, 1994. eBook Collection (EBSCOhost), EBSCOhost (accessed January 16, 2017). NP

In saying this, I would not be heard as arguing either for or against regulation and speech codes as a matter of general principle. Instead my argument turns away from general principle to the pragmatic (anti)principle of considering each situation as it emerges. The question of whether or not to regulate will always be a local one, and we can not rely on abstractions that are either empty of content or filled with the content of some partisan agenda to generate a "principled" answer. Instead we must consider in every case what is at stake and what are the risks and gains of alternative courses of action. In the course of this consideration many things will be of help, but among them will not be phrases like "freedom of speech" or “the right of individual expression," because, as they are used now, these phrases tend to obscure rather than clarify our dilemmas. Once they are deprived of their talismanic force, once it is no longer strategically effective simply to invoke them in the act of walking away from a problem, the conversation could continue in directions that are now blocked by a First Amendment absolutism that has only been honored in the breach anyway. To the student reporter who complains that in the wake of the promulgation of a speech code at the University of Wisconsin there is now something in the back of his mind as he writes, one could reply, "There was always something in the back of your mind, and perhaps it might be better to have this code in the back of your mind than whatever was in there before. “And when someone warns about the slippery slope and predicts mournfully that if you restrict one form of speech, you never know what will be re-stricted next, one could reply, "Some form of speech is always being re-stricted, else there could be no meaningful assertion; we have always and already slid down the slippery slope; someone is always going to be re-stricted next, and it is your job to make sure that the someone is not you. “And when someone observes, as someone surely will, that antiharassment codes chill speech, one could reply that since speech only becomes intelli-gible against the background of what isn't being said, the background of what has already been silenced, the only question is the political one of which speech is going to be chilled, and, all things considered, it seems a good thing to chill speech like "nigger," "cunt," "kike," and "faggot." And if someone then says, "But what happened to free-speech principles?" one could say what I have now said a dozen times, free-speech principles don't exist except as a component in a bad argument in which such principles are invoked to mask motives that would not withstand close scrutiny.

## Democracy

#### Democracy does not justify protecting the current set of constitutionally protected speech – auto-negate.

Solum 88, Solum, Lawrence Byard. [Carmach Waterhouse Professor of Law at Georgetown Law] "Freedom of communicative action: A theory of the first amendment freedom of speech." Nw. UL Rev. 83 (1988): 54.

The first and most basic problem with the self-government theory is its lack of fit with existing first amendment doctrine. The first amendment has been held to protect expression that does not seem obviously necessary to self-government, including artistic expression in the form of poems and plays. 76 Indeed, the Supreme Court has announced, "[O]ur cases have never suggested that expression about philosophical, social, artistic, economic, literary, or ethical matters... is not entitled to full First Amendment protection. '7 7 Of course, the theory may be reformed by stipulating that all speech (or all speech which actually receives first amendment protection) is necessary for effective self-government. Indeed, some advocates of the theory make this move.78 This expansion of the theory, however, seems ad hoc in nature. Moreover, as I argue below, the move to widen the bounds of political speech exacerbates other problems of the theory.

### A2 Informs Citizens

#### Any consequentialist theory that values free speech instrumentally must allow particular restrictions to speech.

Solum 88, Solum, Lawrence Byard. [Carmach Waterhouse Professor of Law at Georgetown Law] "Freedom of communicative action: A theory of the first amendment freedom of speech." Nw. UL Rev. 83 (1988): 54.  
Second, the instrumentalist defense of free speech itself assumes that the citizenry is irrational when it comes to making at least one class of decisions, that is, decisions whether to restrict the freedom of speech. Why can't the electorate rationally decide that certain sorts of political speech do more harm than good and then democratically choose not to allow these sorts of speech? As long as there is sufficient information about the costs and benefits of allowing certain categories of speech, there is no instrumentalist reason for not allowing censorship in such cases. Thus, even if the general tendency of free speech were to produce better consequences, the theory must allow particular restrictions (or classes of restrictions) on free speech that could be demonstrated to produce, on-balance, better consequences.84 Indeed, a utilitarian theory would not only allow but would require such restrictions on free speech. Of course, self-government theorists could attempt to develop a very sophisticated utilitarian justification for democracy with a free speech constraint which dealt with the rationality objection. Such a theory would need to explain why democratic decisionmaking was rational in general, why it would lead to irrational results if decisions concerning what speech is to be allowed were made democratically, and why precommitment to a free speech guarantee is rational. This sort of utilitarian argument is woefully underdeveloped as of now.8 5 Thus, in the end, the instrumentalist interpretation of the self-government theory is unsatisfactory because it fails to explain why democratic decisionmaking is rational in general, but irrational when it comes to making decisions that limit freedom of speech.8

## Fairness

#### Fairness can not be the basis for a political theory; pluralism means that policies can only redistribute, rather than eliminate, unfairness

Fish 94, Stanley Eugene. There's No Such Thing As Free Speech : And It's a Good Thing, Too. New York: Oxford University Press, 1994. eBook Collection (EBSCOhost), EBSCOhost (accessed January 16, 2017). NP

But why not devise plans and policies that have no casualties, policies that are fair to everyone? The answer is that there is not and could not be such a policy because fairness is itself a contestable concept and will be differently defined depending on what assumptions inform those who bran-dish it as a measure. Fairness for everyone would be possible only if every-one's interests were the same, if everyone were in agreement as to what baseline considerations must be in place for a procedure to be labeled "fair." But if that were the case, the question of fairness would never be raised. It is raised precisely because everyone's interests are not the same, and since different interests will generate different notions of fairness (the debate be-tween those who call for equality of access and those who call for equality of opportunity is an example), any regime of fairness will always be unfair in the eyes of those for whom it was not designed. A change in design will not produce less unfairness but unfairness differently directed. The amount of unfairness in the world can never be eliminated or even diminished; it can only be redistributed as in the course of political struggle one angled formulation of what it means to be equitable gives way to another.

## Intent Based Offense

#### Hate speech intrinsically aims at undermining minority membership in society and degrading the historically oppressed

Sean McElwee 13, (research associate at Demos) 7-24-2013, "The Case for Censoring Hate Speech," Huffington Post, http://www.huffingtonpost.com/sean-mcelwee/hate-speech-online\_b\_3620270.html, accessed 2-22-2017. NP

It’s interesting to note how closely this idea resembles free market fundamentalism: simply get rid of any coercive rules and the “marketplace of ideas” will naturally produce the best result. Humboldt State University compiled a visual map that charts 150,000 hateful insults aggregated over the course of 11 months in the U.S. by pairing Google‘s Maps API with a series of the most homophobic, racist and otherwise prejudiced tweets. The map’s existence draws into question the notion that the “twittersphere” can organically combat hate speech; hate speech is not going to disappear from twitter on its own. The negative impacts of hate speech cannot be mitigated by the responses of third-party observers, as hate speech aims at two goals. First, it is an attempt to tell bigots that they are not alone. Frank Collins — the neo-Nazi prosecuted in National Socialist Party of America v Skokie (1977) — said, “We want to reach the good people, get the fierce anti-Semites who have to live among the Jews to come out of the woodwork and stand up for themselves.” The second purpose of hate speech is to intimidate the targeted minority, leading them to question whether their dignity and social status is secure. In many cases, such intimidation is successful. Consider the number of rapes that go unreported. Could this trend possibly be impacted by Reddit threads like /r/rapingwomen or /r/mensrights? Could it be due to the harassment women face when they even suggest the possibility they were raped? The rape culture that permeates Facebook, Twitter and the public dialogue must be held at least partially responsible for our larger rape culture. Reddit, for instance, has become a veritable potpourri of **hate speech**; consider Reddit threads like /r/nazi, /r/killawoman, /r/misogny, /r/killingwomen. My argument is not that these should be taken down because they are offensive, but rather because they amount to the degradation of a class that has been historically oppressed. Imagine a Reddit thread for /r/lynchingblacks or /r/assassinatingthepresident. We would not argue that we should sit back and wait for this kind of speech be “outspoken” by positive speech, but that it should be entirely banned. American free speech jurisprudence relies upon the assumption that speech is merely the extension of a thought, and not an action. If we consider it an action, then saying that we should combat hate speech with more positive speech is an absurd proposition; the speech has already done the harm, and no amount of support will defray the victim’s impression that they are not truly secure in this society. We don’t simply tell the victim of a robbery, “Hey, it’s okay, there are lots of other people who aren’t going to rob you.” Similarly, it isn’t incredibly useful to tell someone who has just had their race/gender/sexuality defamed, “There are a lot of other nice people out there.” Those who claim to “defend free speech” when they defend the right to post hate speech online, are in truth backwards. Free speech isn’t an absolute right; no right is weighed in a vacuum. The court has imposed numerous restrictions on speech. Fighting words, libel and child pornography are all banned. Other countries merely go one step further by banning speech intended to intimidate vulnerable groups. The truth is that such speech does not democratize speech, it monopolizes speech. Women, LGBTQ individuals and racial or religious minorities feel intimidated and are left out of the public sphere. On Reddit, for example, women have left or changed their usernames to be more male-sounding lest they face harassment and intimidation for speaking on Reddit about even the most gender-neutral topics. Even outside of the intentionally offensive sub-reddits (i.e. /r/imgoingtohellforthis) misogyny is pervasive. I encountered this when browsing /r/funny.

#### The intrinsic structure of hate speech is inconsistent with the structure of the omnilateral will – it contradicts formal equality that gives freedom its substantive content

Banham 9, Gary. 11-22-2009, "Dignity and Status: Kant and Waldron," No Publication, http://kantinternational.blogspot.com/2009/11/dignity-and-status-kant-and-waldron.html, accessed 2-22-2017.NP

In the course of giving the first of his Holmes Lectures at the Harvard Law School Jeremy Waldron makes a distinction between two conceptions of dignity. He mentions on the one hand the Kantian view of dignity and on the other the one that is (or ought to be?) at issue in law and civil conduct. The distinction is presented as being that on Kant's philosophical view it follows that dignity is something inherent in each of us as human beings whilst in the law it is rather the case that dignity represents a common status that we possess but which is not merely inherent in us but rather indicative of a certain achievement. Waldron's first lecture raises a number of important issues, too many to be addressed in this posting which is why I wish merely to raise a query concerning this distinction. It appears to be based on taking the Kantian conception of dignity to reside primarily in a general picture of practical reason whilst the legal view of it that is raised by contrast is rather one that defines and describes a social standing and is hence not encoded in a general picture of practical reason. In response to this I want to raise a substantive point concerning the conception of right that Kant himself worked with. Waldron's general concern in the first lecture concerns a certain kind of defence of "hate speech" legislation on the grounds that what is at issue in it is not an "intention" in the private sense on the part of the speaker but rather an effect that is at work amongst those to whom such "speech" (normally a form of writing) is addressed. The effect that is at work is one of reducing the respect shown certain members of minority groups such that they will not be taken to have a legitimate right to equal citizenship rights. As such this kind of "speech" undercuts the sense that there is a social contract to which all have a general kind of connection with. Since this is the point of the "hate speech" in question it aims to undercut "public order" not necessarily in the sense of wishing to instigate violence but rather in that it suggests that some are not truly within the bounds of the order that has been specified as public or not there in a full sense. Waldron's general defence of "hate speech" legislation in these terms has much to commend it but does not fit well with his designation of the Kantian view of dignity as something generically distinct from the legal notion of dignity as a status and achievement. It is correct that Kant speaks of dignity in terms of his general picture of practical reason and in those terms it is presented as something of incomparable worth that we are all possessed of. However Kant's general picture of practical reason has to be related to his view of right. When we look at his view of right we find a conception of it that shows that there is Kantian precedent for the "legal" conception of dignity that Waldron speaks of. In Kant's discussion of the preliminary concepts of the "metaphysics of morals" there is a definition of personhood that determines a person as someone whose actions can be imputed to them which leads on to the sense of a person as someone subject to no other laws than those they give to themselves (autonomy). This notion is important in connection with Kant's subsequent notion of right though it is far from equivalent to it. When Kant turns to specifying the notion of right it is done in relation to a "universal law of freedom" which involves coexistence of each freedom with every other (in the universal or supreme principle of right: Ak. 6: 230). Since this coexistence requires that right be founded on mutual restraint that is based on the ground of each person's freedom then it follows that for a legal order to exist is for the status of personhood to have been given form in such an order. Hence, legal order is itself a general achievement. Kant's fuller account determines this order through notions of equality, freedom and independence (e.g. Ak 8: 290). It is true that the view of the last of these notions is problematic (and alters between the essay on theory and practice and the Metaphysics of Morals) but the notion of equality involved, as distinct from that of the freedom, is grounded in the order of the law whilst the freedom (which is recognised universally in human beings) is something that the law "restricts and realises". If we see the law as that which gives freedom its substantive content but also as something that requires equality in its nature then it follows that the Kantian view of legal dignity is one that matches the achievement sense given to it by Waldron. The "hate crime" problem that arises from being based on the attempt to either reduce the scope of public status given to a member of a group or to find a way of expelling them from that status as such does thus violate the sense of equality of each before the law. In this respect then there is congruence between the Kantian notion of dignity and the legal sense given to it by Waldron. I won't here expand further on the question of "hate crime" though the nature of it (particularly in genocide) is something that is worth consideration in terms of its boundary and limit since it does present itself as one of the ways the social contract can be breached.

## Neutrality Good

#### The First Amendment can’t be apolitical

Fish 94, Stanley Eugene. There's No Such Thing As Free Speech : And It's a Good Thing, Too. New York: Oxford University Press, 1994. eBook Collection (EBSCOhost), EBSCOhost (accessed January 16, 2017). NP

Let me be clear. I am not saying that First Amendment principles are inherently bad (they are inherently nothing), only that they are not always the appropriate reference point for situations involving the production of speech, and that even when they are the appropriate reference point, they do not constitute a politics-free perspective because the shape in which they are invoked will always be political, will always, that is, be the result of having drawn the relevant line (between speech and action, or between high-value speech and low-value speech, or between words essential to the expression of ideas and fighting words) in a way that is favorable to some interests and indifferent or hostile to others. This having been said, the moral is not that First Amendment talk should be abandoned, for even if the standard First Amendment formulas do not and could not perform the function expected of them (the elimination of political considerations indecisions about speech), they still serve a function that is not at all negligible: they slow down outcomes in an area in which the fear of over hasty outcomes is justified by a long record of abuses of power. It is often said that history shows (itself a formula) that even a minimal restriction on the right of expression too easily leads to ever-larger restrictions; and to the extent that this is an empirical fact (and it is a question one could debate), there is some comfort and protection to be found in a procedure that re-quires you to jump through hoops—do a lot of argumentative work—before a speech regulation will be allowed to stand.

#### Freedom of expression can only exist against a background of limitations on speech – neutrality is impossible

Fish 94, Stanley Eugene. There's No Such Thing As Free Speech : And It's a Good Thing, Too. New York: Oxford University Press, 1994. eBook Collection (EBSCOhost), EBSCOhost (accessed January 16, 2017). NP

I want to say that all affirmations of freedom of expression are like Mil-ton's, dependent for their force on an exception that literally carves out the space in which expression can then emerge. I do not mean that expression (saying something) is a realm whose integrity is sometimes compromised by certain restrictions but that restriction, in the form of an underlying articulation of the world that necessarily (if silently) negates alternatively possible articulations, is constitutive of expression. Without restriction, without an inbuilt sense of what it would be meaningless to say or wrong to say, there could be no assertion and no reason for asserting it. The exception to unregulated expression is not a negative restriction but a positive hollowing out of value—we are for this, which means we are against that—in relation to which meaningful assertion can then occur. It is in reference to that value—constituted as all values are by an act of exclusion—that some forms of speech will be heard as (quite literally) intolerable. Speech, in short, is never a value in and of itself but is always produced within the precincts of some assumed conception of the good to which it must yield in the event of conflict. When the pinch comes (and sooner or later it will always come)and the institution (be it church, state, or university) is confronted by behavior subversive of its core rationale, it will respond by declaring "of course we mean not tolerated , that we extirpate," not because an exception to a general freedom has suddenly and contradictorily been announced, but because the freedom has never been general and has always been understood against the background of an originary exclusion that gives it meaning.

#### Terminally non-unique – all expression privileges some speech and discriminate against other perspectives

Fish 94, Stanley Eugene. There's No Such Thing As Free Speech : And It's a Good Thing, Too. New York: Oxford University Press, 1994. eBook Collection (EBSCOhost), EBSCOhost (accessed January 16, 2017). NP

The demand that discrimination be eliminated entirely is finally the demand that we live outside (or above or to the side of) the varied and conflicting perspectives that give to each of us a world saturated with goods, goals, aspirations, and obligations. It is the demand that we no longer be human beings—beings defined by partiality—but become as gods, beings who know no particular time or place. This is the dream not only of philosophy but of theology (in relation to whose assumptions it at least makes sense), but until we are the beneficiaries of a revelation or of a god who descends to begin his reign on earth, it must remain just that, a dream, and we will continue to be confined within the traditions and histories that generate our differing senses of what is true and good and worth dying for. To put it another way, each of us lives in a narrative, a story in which we are at once characters and the tellers. No one's story is the whole story, and in the various lights shed by our various stories, different truths will seem self-evident and different courses of action will seem obviously called for. Those we now criticize as racists, those who in the nineteenth century and for the first sixty years of the twentieth argued for second-class citizenship and segregated facilities and limited access to the ballot box, did not think of themselves as evil persons pursuing evil policies; they thought of them-selves as right, and from the vantage point of the story they were living and telling—a story I find unpersuasive and repellent—they were. In the years since 1960, that story has become less and less compelling to more and more people, which means not that its limitations have been transcended but that another story, with its own limitations, has become more compelling. The effect of telling that newer story has not been to eliminate partiality but to alter its shape, so that while the old story strongly recognized and validated some facts and de-emphasized some others, the new story recognizes and validates a different set of facts and in so doing necessarily slights facts to which the inhabitants of alternative stories cling for dear life. The conclusion is perhaps distressing—especially if you are holding out for a vision rooted in no story but in the Whole Truth as seen by the eyes of God—but it is inevitable: alternative stories are alternative vehicles of discrimination, alternative narratives in which some interests are slighted at the expense of others. No agenda operates (or can even be conceived) that does not privilege some concerns and turn a hostile or blind eye to some others, and what follows from that conclusion is the even more distressing conclusion that you can only fight discrimination—dislodge one story whose telling has consequences you don't like—by discriminating, that is, by put-ting another story whose consequences someone else won't like in its place.

## Plurality of Principles 🡪 Speech/Intuitionism

#### 1. A plurality of principles leads to contradictory conclusions. Solum 88, Solum, Lawrence Byard. [Carmach Waterhouse Professor of Law at Georgetown Law] "Freedom of communicative action: A theory of the first amendment freedom of speech." Nw. UL Rev. 83 (1988): 54.

In addition, there is no guarantee that the various principles produce consistent results. Of course, it is possible that the various principles justify the protection of different sorts of expression, and that the potential conflict will not be realized in practice. Many of the theories examined so far appear to provide affirmative reasons to allow censorship in certain cases. Thus, the self-government theory's emphasis on majoritarian sovereignty would appear positively to mandate censorship that the majority approves and does not interfere with the process of selfgovernment. The self-development theory would appear to support the censorship of expression that inhibits growth or stifles the development of human potential. Hence, there is a clear potential for true conflict between theories. In the absence of a metatheory that structures or ranks the various principles, there would appear to be no method for application of the plurality of principles in the cases of true conflict.

#### A2 Theories of free speech are unnecessary – just use intuitions. Solum 88, Solum, Lawrence Byard. [Carmach Waterhouse Professor of Law at Georgetown Law] "Freedom of communicative action: A theory of the first amendment freedom of speech." Nw. UL Rev. 83 (1988): 54.

There are, however, objections to the implicit knowledge argument, if it is taken as the very strong claim that there can or should be no general theory of the first amendment, independent of the merits of the particular theory proposed. First, implicit knowledge can be made explicit. For example, linguistics makes our implicit knowledge of the rules which govern the formulation of well-formed expressions in language explicit, by formulating theories of syntax. Second, theories do not necessarily result in a loss of valuable implicit knowledge. Each theory must be assessed on its own merits to determine whether it conflicts with our considered judgments about particular cases in a way that would constitute the loss of valuable implicit knowledge. Third, there are positive values in making our implicit knowledge explicit. We may decide, after reflection, that some of our considered judgments about particular cases are incorrect. Moreover, in a pluralistic culture we ought to be on guard against the possibility that the considered judgments or intuitions reflected in judicial opinions reflect implicit knowledge biased in favor of a particular group or social class. This point about pluralism leads naturally to the last defense of the plurality of principles approach.

## Virtue/Growth

#### 1. This justifies compulsory education, not free speech. Solum 88, Solum, Lawrence Byard. [Carmach Waterhouse Professor of Law at Georgetown Law] "Freedom of communicative action: A theory of the first amendment freedom of speech." Nw. UL Rev. 83 (1988): 54.

The self-realization theory, however, fails to explain or justify the freedom of speech. One method of expressing the difficulty in the self-realization theory is to draw a distinction between a justification for freedom of speech and a justification for mandatory communicative education. The self-realization argument justifies requiring individuals to engage in communication that maximizes their growth and flourishing, but it does not justify freedom of speech-the freedom of individuals to determine for themselves the subjects worth discussing and the viewpoints worth taking. Communicative education might be realized consistently with a scheme that limited public speech to a narrow range of topics that government officials determined would have the greatest potential for enhancing self-realization.108 Indeed, this is precisely what does go on (at least to some extent) in formal education.

Solum continues in footnote,

The self-realization theory must respond to the following questions: why wouldn't communicative education shaped by government serve the self-realization function as well as individually chosen communication? If the answer has to do with the development of an individual's capacity to choose, then why won't a circumscribed set of choices serve as well as an unlimited set? If an unlimited set is necessary, then how can any limitations on speech be justified? If a limited set will do, does this set fit our intuitions about what speech should be protected and the existing law?

#### 2. Self-realization theories of speech fail to justify content-neutrality – means you negate. Solum 88, Solum, Lawrence Byard. [Carmach Waterhouse Professor of Law at Georgetown Law] "Freedom of communicative action: A theory of the first amendment freedom of speech." Nw. UL Rev. 83 (1988): 54.

A related strategy for explicating this difficulty with the self-realization theory is to explore the implications of that theory for the area of legal doctrine expressed under the rubric of "content regulation." In Police Department v. Mosley, the Supreme Court declared that "above all else, the First Amendment means that government has no power to restrict expression because of its message, its ideas, or its content."' 110 The view that freedom of speech serves self-realization does not support the requirement of "content-neutrality." Rather, the self-realization theory calls for the protection only of that communication which enhances personal growth; indeed, if the theory is correct, then the suppression of speech which impedes personal growth is not only consistent with the freedom of speech, but is actually mandated by the values that animate the first amendment. 11 Such an interpretation would represent a strong break from the interpretive tradition of judicial decision.

**3. Self-development theories of speech cannot defend speech *despite* the harm it may cause.   
Schauer 83**, Schauer, Frederick. "Must speech be special." Nw. UL Rev. 78 (1983): 1284.

As a question of social and political philosophy, the argument against the adoption of the self-development principle is premised on a point about the nature of moral and practical reason. If a specific principle is generated by a broader principle, and if we accept the broader principle, then we must, at the risk of self-contradiction, accept every other specific principle also generated by the broader principle, unless we can give particular and articulated reasons for drawing a distinction. 48 If we accept X, and if X generates a, b, and c, then we must be willing, if we are to act rationally, to accept a, b, and c, and not just the one or two of those that happen to strike our fancy at the moment. In the context of the principle of freedom of speech, then, if we say that we value free speech because it is a form of self-development, and if we accept self-development as a given, then, if we have not justified any qualification, we must be willing to protect every form of self-development as much as we protect speech. Yet many forms of self-development, as I am using that term, can cause harm to other individuals or to society in general. It would be implausible to suppose that the state is or could be significantly disabled to prevent harms merely because the cause of those harms was, in the process, engaged in self-expression, self-fulfillment, or self-realization. Thus we acknowledge that, in general, the prevention of harm is a proper function of the state, regardless of how nice the causing of harm may make someone feel. But if speech is merely one category within the larger universe of self-developing actions, then it would seem, again to be consistent, that we would have to accept the principle that speech may be restricted when it causes harm to others. Yet then what is the point of a principle of free speech? Many communicative acts, including many that our pre-theoretical understanding of the nature of free speech would lead us to want to protect, have the capacity for causing significant harm to others or to society in general. Indeed, if I may return to American constitutional law for a moment, it is hard to think of any first amendment case in which the communicative acts at issue did not cause some degree of harm, or at least offense.49 The anguish caused by the Nazis in Skokie, 50 the offense and annoyance of Cohen's jacket5' and Cantwell's phonograph 5 2 the damage to Damron's reputation and career 53 the economic losses of even the innocent merchants of Claiborne County,54 the distortion of the election process by money or misleading promises,55 and the humiliation caused by publicity about the victim of a sex offense56 are but a small sample of instances in which the principle of freedom of speech is understood to prevent the government from intervening to deal with the kinds of harm that are normally taken to be sufficient to justify use of the state's coercive powers. Thus, we want to protect speech not because it causes no harm, but despite the harm it may cause. 57 Our search for a justification, therefore, is a search for a reason to distinguish speech from the entire range of intentional actions. This is exactly the distinction that the various arguments from self-development fail to provide. As a result, these arguments tell us why we should protect liberty in general, but in the process they also become arguments for giving speech no greater protection than that given to the full range of other intentional actions. As a question of social and political theory, therefore, the arguments from self-development fail to provide a reason for recognizing a principle that grants greater protection for speech against state intervention than it grants to anything else the individual might wish to do.

## Marketplace of Ideas

### A2 Truth-as-correspondence

#### 1. Dependent on an empirical proposition of doubtful validity.

#### Solum 88, Solum, Lawrence Byard. [Carmach Waterhouse Professor of Law at Georgetown Law] "Freedom of communicative action: A theory of the first amendment freedom of speech." Nw. UL Rev. 83 (1988): 54.

On the correspondence view of truth, this link itself is an empirical hypothesis subject to verification. The question is whether it is the case that truth prevails more frequently in a society which respects a 'free speech principle than in one that does not. We might postulate that in academic and scientific discourse, the prevailing practice and historical experience tend to confirm the crucial link. But it is one thing to contend that open debate leads to truth among a select community of scientists and academicians, trained for rational discourse, and quite another thing to contend that this is also true among the general public. It is not evident that, given current conditions, truth-as-correspondence prevails over falsehood more often in societies with freedom of speech than in societies without this freedom. History provides many examples of falsehood prevailing over truth.57 Experience with the mass media and contemporary politics suggests that simplistic or comforting messages may be more likely to generate a consensus than complex or disturbing ones. Moreover, some points of view hardly seem represented in the national media and hence would seem not to have a chance to compete in the marketplace, whether they be true or false. A major difficulty with the argument for free speech from its instrumental value in promoting truth-as-correspondence is that it makes our continued commitment to freedom of expression dependent on an empirical proposition of doubtful validity.5

#### 2. Begs the question why truth is an overriding social value. Solum 88, Solum, Lawrence Byard. [Carmach Waterhouse Professor of Law at Georgetown Law] "Freedom of communicative action: A theory of the first amendment freedom of speech." Nw. UL Rev. 83 (1988): 54.

A second difficulty concerns the priority of truth as a social value. The strength of the freedom of expression depends, at least in part, on the strength of its justification. A strong version of the argument from truth-as-correspondence requires that the search for truth be at or near the top of the hierarchy of social values. But the quest for knowledge, important as it may be, is not clearly the top priority as measured by either existing institutional arrangements or individual preferences. If truth is only one value, competing with many others, then the freedom of expression may be nothing more than one of many generally observed principles, rather than an overriding principle. The truth-as-correspondence interpretation of the marketplace metaphor fails to justify a right to freedom of speech as a trump that invalidates government action in the pursuit of other legitimate social goals.

### A2 Truth-as-consensus

#### 1. Confuses truth for method. Solum 88, Solum, Lawrence Byard. [Carmach Waterhouse Professor of Law at Georgetown Law] "Freedom of communicative action: A theory of the first amendment freedom of speech." Nw. UL Rev. 83 (1988): 54.

The truth-as-consensus interpretation is open to several objections. Initially, the consensus theory of truth may rest on a "category mistake"; the theory appears to confuse the meaning of truth with the methods for arriving at true statements."4 No matter how universal the agreement about the truth of a proposition, a proposition is not true unless the correspondence condition is met. That this is a feature of our ordinary use of the concept of truth can be verified by the following thought experiment. Imagine that everyone agreed that the earth were flat. The proposition, "The earth is flat," would nevertheless not be true if the earth were really round.

#### 2. Truth-as-consensus offers a circular justification for free speech. Solum 88, Solum, Lawrence Byard. [Carmach Waterhouse Professor of Law at Georgetown Law] "Freedom of communicative action: A theory of the first amendment freedom of speech." Nw. UL Rev. 83 (1988): 54.

In addition, the truth-as-consensus interpretation has a certain question-begging quality. If free speech is defined as a prerequisite for truth, then how can the role of free speech in promoting truth provide any justification for a right to free speech? Put another way, it is not clear, on the truth-as-consensus view, that free speech leads to more desirable results than does unfree discussion. My point is that if truth is nothing more than the result achieved through free speech, then there is no more reason to value truth than there was to value free speech in the first place.

#### 3. Terminates in the conclusion that the most powerful voice is true. Solum 88, Solum, Lawrence Byard. [Carmach Waterhouse Professor of Law at Georgetown Law] "Freedom of communicative action: A theory of the first amendment freedom of speech." Nw. UL Rev. 83 (1988): 54.

Furthermore, the notion that the strongest opinion in the marketplace of ideas is true seems to conflict sharply with some of our particular judgments about truth. If a strong majority consensus on the propositions of Nazi ideology, including the opinion that Jews were subhuman, had emerged from conditions of relatively free speech during the late Weimar Republic, would that make those propositions true? If the wealthy and powerful can propagate their opinions more effectively than the poor, does that make their views more likely to be true?67 Our intuitive answer to these questions is no. We do not believe that the ability of powerful groups simply to achieve a consensus validates their claims to truth or right.